



3. On the following day the assistant chief was notified of the dead body of the deceased having been found outside the home compound of **Vincent Kipkemboi [PW4]**, a cousin to the deceased. The Chief noted that the body had a cut injury on the head. He then contacted the police. **Vincent [PW4]** attended the funeral ceremony in the company of the deceased at about 10:00pm and left an hour later at about 11:00pm after the deceased had already left. He **[PW4]** went home, but on the following day found the body of the deceased near his home. He alerted a sister of the deceased who arrived at the scene and screamed. The two called a Village Elder who in turn alerted the Assistant Chief. He **[PW4]** noted that the body of the deceased had a head injury.
4. Among the group of youngmen at the funeral ceremony commonly known as “disco matanga” were **Dancan Kiprop [PW2]** and **Boniface Kibet [PW3]**. They were in the company of others including one **Brighton Amaliko** and one **Lewis**. **Dancan [PW2]** and **Lewis** left the ceremony at about midnight and on their way home came across Wesley [the Accused], one **Kisigani** and one **Kibet**, who were allegedly carrying machete [panga] and sticks which they used to attack **Dancan** and his group.
5. After escaping from the scene of the attack **Dancan [PW2]** and **Brighton** proceeded to their respective homes, but on the following day **Dancan** was informed by one **Deno [Dennis]** that **Jimmy** [deceased] was found

dead. He **[PW2]** had seen the deceased at the funeral ceremony. He later learnt that the Accused was arrested after being suspected of having killed the deceased.

**6. Boniface [PW3]** proceeded to the funeral ceremony together with his school mates including the Accused, one **Dennis Liyale** and one **Kelvin Kisigani**. While they were all there the Assistant Chief arrived later and stopped the “disco-matanga.” He **[PW3]** accompanied by **Dennis, Duncan** and **Danston** went home, but returned to the funeral ceremony in search of his **[PW3]** brother. In the process, **Boniface [PW3]** and his group met the Accused and his group carrying long sticks which they used to attack the first group.

**7.** The Accused used his long stick to attack and assault **Duncan** and others. He also attacked **Boniface [PW3]**, but was restrained by the deceased with whom they fought and used his long stick to hit and cause him **[deceased]** to fall down.

On the following day the Accused and **Kisigani** were arrested by the Assistant Chief while in school.

**8.** A postmortem on the body of the deceased was carried out on the 25<sup>th</sup> June 2021 by **Dr. Evans Ngetich Kibiwott [PW5]** who thereafter compiled the necessary report showing that the deceased died from severe head brain injury secondary to trauma due to high energy blunt trauma. The suspected weapon or object used in the

fatal attack of the deceased was said to be a wooden stick **[P. Exhibit 1]** and was produced herein by **Sgt. Moffat Musungu [PW7]** on behalf of **CPL. Kanyi**, both attached to DCI Nandi Central.

**9.** The Government Analyst, **Polycap Lutta Kweyu [PW6]**, received the blood stained suspect stick and a blood stained cap from the DCI Nandi-Central for purposes of forensic examination. Thereafter, he compiled his report dated 10<sup>th</sup> September 2021 showing that the DNA profile generated from the blood stains on the suspect stick and on the cap matched the DNA profile generated from the blood sample of the deceased.

**10.** It was on the basis of the foregoing prosecution evidence that the Accused was charged with the present offence which he denied and contended in his defence that after the area Assistant Chief arrived at the funeral ceremony and told them to put off the music and go home, he left with his group and on the way they met another group of about fifteen [15] youngmen holding wooden sticks and blocking the walking path. A scuffle erupted between the two groups during which time the deceased attacked him [Accused] as he went to the rescue of one **Kibet**. He [Accused] had a thin stick which he used to defend himself during the scuffle.

**11.** The incident occurred in darkness, the Accused and his colleagues escaped from the violent scene and went to

their respective homes, but on the following day the area chief and police officers went to his school and arrested him. He further contended that he did not commit the offence and could not tell who actually killed the deceased.

**12.** Basically, a consideration of the evidence in its totality indicates that the death of the deceased was unfortunate and clearly not intended in as much as it was the result of a violent confrontation between two groups of young men on their way to their respective homes after attending a “disco-matanga” within their neighbourhood which was brought to an end by the area’s Assistant Chief.

**13.** The evidence showed that each and every member of the two groups participated in the unlawful transaction which involved fighting and assaulting each other such that it could not be established beyond reasonable doubt through the prosecution evidence that the fatal blow inflicted upon the deceased by a blunt or sharp object came from the Accused. Any one of the brawling and fighting youngsters could have inflicted the fatal or killer blow against the deceased who was also a participant in the unlawful criminal transaction.

**14.** Although the prosecution in its final or closing submissions stated that the Accused was positively identified as the “killer” assailant meaning that he was the person who inflicted the fatal blow upon the deceased, the

evidence by the prosecution witness **Dancan [PW2]** and **Boniface [PW3]** did not and could not have established the fact due to its contradictory nature as to which particular person inflicted the fatal blow and also due to the fact that the offence occurred in conditions which were not favourable for identification of the actual culprit.

**15.** Indeed, the presence of moonlight during the hours of darkness would provide favourable conditions for identification if the intensity of the moonlight was high and adequate opportunity to make a positive identity of a suspect existed. Herein, none of the prosecution witness talked of the intensity of the moonlight at the material time or whether there was adequate opportunity to positively identify the culprit.

**16.** It was not sufficient for **Boniface [PW3]** to merely say during Cross-Examination that there was moonlight without explaining or indicating its intensity and how it made him identify the person who inflicted the fatal blow upon the deceased using either stick or panga. These were the objects being used by the fighting groups at the material time.

**17.** It is instructive to note that **Dancan [PW2]** never mentioned the presence of moonlight on that material night and that both **Dancan [PW2]** and **Boniface [PW3]** who were the key prosecution witnesses on the alleged identification of the Accused indicated that they did not

know the person who actually inflicted the killer or fatal blow upon the deceased.

**18.** The prosecution evidence against the Accused was merely to link him to the fighting group of youngsters, but not the cause of the deceased's death. In any event, the key prosecution witnesses were also linked to the fighting groups.

The circumstances of this case and the conditions under which it happened were incapable of showing with utmost certainty that the Accused was the person who actually caused the death of the deceased.

**19.** In fact, the Accused was not under any obligation to prove his innocence. He admitted having been a member of one of the fighting groups, but vehemently denied that he was the person who killed the deceased during the violent fight. He said that he could not tell who killed the deceased.

**20.** All in all, the prosecution evidence against the Accused was insufficient and lacking in credibility such that the ingredients, of murder were not established and proved against him. If anything, what was established was the offence of manslaughter and in any case, not against the Accused.

It is therefore the ultimate finding of this court that the prosecution has failed to establish its case against the

Accused beyond reasonable doubt. The Accused is herein found **NOT GUILTY** as charged and acquitted accordingly to be set at liberty forthwith unless otherwise lawfully held.

**Dated and Delivered this 1<sup>st</sup> day of April, 2026**

**HON. J. R. KARANJAH,  
JUDGE**