

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAPSABET
CRIMINAL DIVISION
CRIMINAL CASE NO. E096 OF 2021

REPUBLIC.....
.....**PROSECUTOR**

VERSUS

ABRAHAM TANUI
KIPKOECH.....**ACCUSED**

JUDGMENT

1. The Accused, **Abraham Tanui Kipkoech**, is charged with **Murder, Contrary to Section 203 as read with Section 204** of the **Penal Code**. It was alleged that he murdered **Grace Namarome Aidah** [deceased] on the 16th December 2021 at Kamng’anio Village Chesumei Nandi County. The prosecution case against him was based on the fact that the deceased was an employee of **Esther Chepkemboi Rugut [PW1]** and her husband, one **Stephen Rugut** and on the material date she [deceased] was left on duty at her employers’ farm house as the two proceeded on their own frolics only to later learn that the dead body of their employee was found within their homestead.

2. A report was made to the police who arrived at the scene led by **CIP Ndirangu [PW6]** and removed the dead body to the mortuary at Kapsabet hospital where it was identified by the deceaseds son, **Lortam Tsebi [PW2]**, for Post mortem purposes. Earlier on the material date at about 10:00am the son had spoken to the deceased who informed him of a sick nephew. He [PW2] then sent his son to collect and take the sick nephew to hospital, but the son **Tony Kibet [PW8]** did not find the deceased at the scene when he went there in the afternoon hours. He was told by the nephew [actually niece] that the deceased had been called out by a certain person.

3. **Tony [PW8]** called the deceased on her phone, but it was in her house, yet she worked at the homestead of **Esther [PW1]**. He went looking for her but in vain. He later took the sick child to his father **[PW2]** and at about 7:00pm learnt that somebody had been killed at the homestead of **Esther [PW1]**. He was shocked on the following day to learn that the person killed was the deceased, his grandmother. The matter was reported to the police and the Accused was arrested as the suspect murderer of his [PW8] grandmother.

4. **Tony [PW8]** had on the material date carried the Accused on his motor cycle taxi [boda-boda] and dropped him

along the way near a primary school from where he proceeded for work at the home of **Esther [PW1]** even as he **[PW8]** proceeded with his journey to the deceased's house nearby. However, on his way back he **[PW8]** spotted two bags of maize on the roadside near the home of **Esther [PW1]** and a few metres away saw the Accused talking to **Andrew Tenai [PW9]**. The Accused beckoned him to step and he did so. He [Accused] then boarded Tony's motor cycle and sat on top of timber being transported by Tony for a customer. He [Accused] however, boarded another motor cycle on the way and returned to where he had been collected by **Tony [PW8]**.

5. Andrew **[PW9]** was a member of the local Nyumba-Kumi vigilante group when he spotted a stranger in the person of the Accused in the neighbourhood. He talked to the Accused who told him that he was a maize dealer and had purchased some maize from one **Mzee Maina** who happened to be the father of Andrew. He [Accused] said that he was looking for a motor cycle to transport the purchased maize and as Andrew entered his house the Accused went away on a motor cycle carrying bags of maize. In the meantime, **Andrew** learnt from his father that he [father] did not sell any maize to anybody. He also learnt at about 7:00pm that the maize store of his neighbour called **Magut** had been broken into and some

bags of maize stolen from therein. He further learnt that the dead body of a woman [deceased] had been found in **Magut's** farm.

6. Sgt. Simon Sopia [PW7], investigated the case and after recording statements from witnesses arrested and treated the Accused as the prime suspect in the murder of the deceased. Among the witnesses were **Shadrack Tirop Too [PW3]** and **William Kimeli [PW4]** both of whom spotted the Accused at the material scene on the material date.

7. Shadrack [PW3] saw the Accused enter the homestead of the deceased's employer **[PW1]** and **William [PW4]** saw the Accused walking with the deceased within the homestead.

Dr. Evans Kibiwott [PW5], performed the postmortem on the body of the deceased and compiled the necessary report. **[P. Exhibit 1]** showing that the cause of injury was severe head injury due to an act of assault with a sharp object.

This implied that the deceased was attacked and fatally injured by an individual person or persons.

8. The defence case was a denial of any criminal responsibility by the Accused in the death of the deceased. He implied that he was an innocent employee of a sawdust dealer called **Chege** and that he was

arrested without good cause while in the process of executing his lawful duty.

He denied having met the deceased on the material date and maintained that he did not kill her.

9. Both the prosecution and defence cases as supported by the evidence availed from both sides raises no particular dispute with causation of the death of the deceased. There was sufficient and undisputed evidence that the deceased was attacked and fatally injured in a manner suggesting that the Assailant had a clear intention to occasion grievous harm upon her and terminate her life so as to bear no witness to the theft of farm produce from her employer's farm.

10. The basic issue for determination was therefore on the question of the identification of the Accused as the killer Assailant. He denied the fact thereby placing upon the prosecution the burden of disproving his denial and proving beyond reasonable doubt that he was actually the offender and none other person.

Indeed, the legal burden to prove a charge against an Accused Person lies with the prosecution upon a standard which is beyond reasonable doubt.

11. Herein, there was no direct evidence against the Accused. None of the witnesses saw him in the act of

assaulting and fatally injuring the deceased. However, there was evidence that he was within the vicinity and even within the homestead of **Esther [PW1]** where the deceased worked as a domestic worker. He was innocently dropped there by the deceased's grandson **[PW8]** who again saw him with two bags of maize. He told and lied to a member of the local vigilante group **[PW9]** that he had purchased the maize from the member's father. The actual owner of the maize **[PW1]** indicated that the maize had been stolen from her store which was broken into.

12. All that was stated by **Esther [PW1]**, **Tony [PW8]** and **Andrew [PW9]** happened before and after the death of the deceased and none of them could state with certainty at what juncture did the death of the deceased occur. But, just prior to the death the Accused was seen entering the home of the deceased employer by **Shadrack [PW3]** and was seen within the homestead by **William [PW4]** while walking with the deceased.

13. As shown by the aforementioned witnesses the circumstances accruing before and after the death of the deceased raise a very strong inference that the Accused was most likely than not the person who assaulted and fatally injured the deceased with a view to concealing his

identity as the thief of the maize belonging to the deceased's employer.

14. It could not therefore have been a coincidence that the Accused entered the material homestead, met the deceased and walked away with two bags of maize only for the deceased to be found murdered at a later stage. He was the last person to have been seen with the deceased before she died.

What could be deduced from all the circumstances of the case was that the Accused was the person who killed the deceased to the exclusion of any other person.

15. Indeed, the Accused did not dispute his presence at the scene on the material date before and after the death of the deceased. The circumstantial evidence against him irresistibly pointed to his guilt rather than innocence. As was held by the Court of Appeal in [**Ahemed Abolfathi Mohammed & Another [2018] KECA 743 [KLR]**], the guilt of an Accused Person can be proved by either direct or circumstantial evidence which is evidence which enables a court to deduce a particular fact from circumstances of facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused Person just like direct evidence.

16. In this case the circumstances from which an inference of guilt can be drawn against the Accused have been cogently and firmly established and do have the tendency of pointing towards his guilt. In that way, his defence was adequately disproved and discredited. This court is therefore satisfied not only that the inculpatory facts are incompatible with the innocence of the Accused and incapable of explanation by any other reasonable hypothesis than that of guilt of the Accused but also that there are no co-existing circumstances which may tend to weaken or destroy the inference of guilt **[See, Mkendeshwo Vs. Republic [2002] 1 KLR [461].**

17. Ultimately, it is the finding of this court that the prosecution has discharged its burden of proving the charge against the Accused beyond any reasonable doubt. He is herein found guilty as charged and convicted accordingly.

Dated and Delivered this 2nd day of April, 2026

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