

**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: MATIVO, GACHOKA & KORIR,

JJ.A.) CRIMINAL APPEAL NO. 33 OF 2019

BETWEEN

CHARLES LANGAT *alias* ZACHARIAH.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(An appeal from the Judgment of the High Court at Kericho (Mumbi Ngugi, J)
delivered on 18th December 2018*

in

HCCR No. 28 of 2015)

JUDGMENT OF THE COURT

1. The appellant, Charles Langat *alias* Zacharia, was charged, tried, convicted, and sentenced to suffer death for murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence were that on the 13th day of December 2015 in Eastleigh Village, Sorget Sub-Location, Londiani Sub- County within Kericho County, he murdered Linda Cherono.
2. The appellant is now before us challenging the trial court's judgment on the grounds that the learned Judge erred by: convicting him on insufficient evidence; failing to find that the evidence of identification was unsatisfactory and uncorroborated; and convicting him on unsatisfactory

circumstantial evidence.

3. This is an appeal arising from the judgment of the High Court sitting as a court of first instance. That being the case, we are duty-bound to consider the evidence on record before arriving at our independent conclusion. However, in doing so, we must be alive to the fact that we did not have the benefit of hearing and observing the witnesses testify, and must therefore give room to that handicap. In this regard, we associate ourselves with the holding of the Court in **Dickson Mwangi Munene & Another vs. Republic [2014] eKLR** that:

“This being a first appeal, this Court is obliged to re-evaluate the evidence on record to determine if the trial court’s decision was based on evidence and is legally sound. On matters of fact, as appellate court we have to bear in mind the caution that having heard and seen the witnesses testify, the trial court was better placed to assess their demeanor. We should therefore be slow to reverse the trial judge’s finding of fact unless it is supported by the evidence on record.”

4. In line with the stated principles, we will summarise the evidence adduced at trial. The prosecution called 11 witnesses, while the appellant was the sole witness in his defence.
5. **Dr. George Biketi (PW1)**, a Senior Medical Officer at Elburgon Sub-County Hospital, performed autopsy on the body of Linda Cherono (the deceased) on 15th December 2015. He found numerous injuries, including facial bruises, an 8cm by 6cm L-shaped scalp cut, an injured cricoid cartilage, and a penetrating stab wound through vital organs. Notably, there was a torn

hymen and the presence of semen in the posterior fornix of the

vagina. He concluded that the cause of death was multifactorial due to strangulation, penetrating abdominal injuries, and severe head injuries, attributing the wounds to a sharp object. He collected blood samples and vaginal swabs for forensic analysis. During cross-examination, he noted that while evidence of strangulation was clear, the embalming of the body limited the assessment of the injury sequence.

6. **Benard Kiprop Rotich (PW2)**, the father of the deceased, testified that on 13th December 2015 at around 6:00 p.m., he received an urgent call from his sister-in-law, **Magdalene Chepkorir (PW4)**, asking him to go to her home in Eastleigh, Kamuingi. Upon arriving, he found a crowd gathered and his wife, **Josephine Chepkemoi (PW5)**, crying. She informed him that their child was dead. He was directed to the sheep pen, where he discovered his daughter's body in a pool of blood. A police officer prevented him from touching the body as they needed to take photographic evidence. Later, he and his brothers transported the body to St. Josephine Mortuary in Molo. He testified that the appellant used to work for **PW4** as a herdsman.

7. **Simon Kirui Rotich (PW3)**, testified that on 13th December 2015 at around 6:00 p.m., he received a call from his brother, **Bernard Kiprop Rotich (PW2)**, informing him that his (Bernard's) daughter had been killed. The next day, he went to the scene in Eastleigh with his wife and brothers, where they

found a large crowd and were shown the blood-soaked sheep pen where the

body had been discovered. Since the body had been taken to the mortuary, they visited the DCIO's office to arrange for a post-mortem examination. On 15th December, 2015, he identified Linda Cherono's body at St. Josephine Mortuary in Molo, observing stab wounds on her head, bruises on her back, and significant blood on her throat. He confirmed in cross-examination that he lived in Masaita village, about 3 kilometres from the scene, but did not know the appellant.

8. **Magdalene Chepkorir (PW4)**, the aunt of the deceased Linda Cherono, testified that on 13th December 2015, a Sunday, she was at home in Londiani with her sister **Josephine Rotich (PW5)** and her daughter Sandra Chepngeno. The deceased opted to attend the Catholic Church, while the others went to the Kenya Assemblies of God Church. After returning home at around 3:00 p.m., Magdalene noticed that clothes had been removed from the drying line, which was strange, and saw blood stains in the kitchen, which she initially attributed to a cat killing a mouse. The deceased was nowhere to be seen. Concerned about Linda's whereabouts, she called the appellant, who admitted to removing the clothes from the drying line but denied having seen Linda. Reportedly, neighbours had seen her running home during the rain. Later, when Magdalene went to fetch the cows, she heard screams and returned to find **PW5** saying Linda had been killed. Upon discovering Linda's body in the sheep pen with blood on her clothes, police arrived and requested to enter the appellant's house, where they found

several items, including a bloody kitchen

knife and the deceased's petticoat. Magdalene confirmed that the appellant was the only one left at home when they went to church and that he had disappeared, only to be arrested three days later.

9. **Josephine Chepkemai (PW5)**, the mother of the deceased, testified that on 13th December 2015, she was at her ancestral home in Londiani with her sister **Magdalene Chepkorir (PW4)**, her deceased daughter, and the appellant, whom she had recommended to **PW4** for employment as a labourer in March 2015. On that Sunday morning, while she, **PW4**, and Sandra were preparing to attend church, Linda chose to go to the Catholic Church, aiming to become a nun. They left the appellant at home, washing clothes, attired in a purple t-shirt and black trouser. On their way home from church, they saw the appellant at Kiamungi, but they did not bother with him as it was his off day. Upon arriving home between 2:00 p.m. and 3:00 p.m., they found the house locked and noticed that clothes had been removed from the drying line, which was strange, while the food had not been eaten. **PW4** called the appellant, who informed them that he hadn't seen the deceased. They assumed she might be at a salon or still at church, but inquiries yielded no information. Later, while taking the sheep to the pen, she discovered the deceased inside the pen, covered in mud and blood, and without underpants. She raised an alarm, and neighbours assisted in notifying the police. She stated that the deceased was 14 years old and had just completed her Class

Eight exams. She confirmed that the appellant did not return home that day and was arrested two or three days later.

She also mentioned that the appellant lived alone in his house in the compound and that she was too distraught to enter the mortuary during the post-mortem examination.

10. **Henry Kiptoo Sang (PW6)**, a Government Analyst based at the Government Chemist Laboratories in Nairobi with a Bachelor of Science Degree in Chemistry from Moi University and 10 years' experience, testified that on 18th December 2015, his laboratory received various items for analysis from PC Henry Muriti of DCI, Londiani, accompanied by a police memo form dated 17th December 2015 requiring analysis for blood stains, spermatozoa and DNA relationships. The items received included a knife (item A), blood samples of the appellant (B1 and B2) and blood sample of deceased (D), a vaginal swab of the deceased (E), a pair of blue and white socks (F), a pair of black long trousers (G), a pair of beige sandals (H), a pair of black gumboots (I), pink underpants of the deceased (Y), and a black petticoat of the deceased (K). Upon examination, the knife was lightly stained with human blood, the socks and sandals were lightly stained with human blood, the underpants were heavily stained with human blood, and the pair of long trousers was moderately stained with blood. No blood stains were detected on the gumboots or petticoat. DNA analysis revealed that the DNA profiles generated from the knife (item A) and the pair of long trousers (item G) matched those generated from the blood sample of the deceased. He produced his report dated 25th April 2017 as P. Exhibit 8.

11. On cross-examination, he explained that the failure to generate DNA profiles from the vaginal swab could be attributed to decomposition of the sample, noting that the samples were collected on 13th December 2015 but only submitted on 18th December 2015, a delay of 5 days which was sufficient for DNA to degenerate, and he further clarified that the absence of DNA from the vaginal swab did not necessarily mean there was no sexual activity as the sample may have decomposed. He explained under inquiry from the trial court that lightly stained items actually indicated blood had a short time to dry, which aided preservation and explained why good DNA profiles were obtained from such items. He also acknowledged that the delay in analysis until 27th February 2017 due to staffing shortages at the Government Chemist was also a contributory factor to the failure to generate DNA profiles from some exhibits.
12. **John Muchiri Njogu (PW7)**, the Chief of Sorget Location, testified that on 13th December 2015 at around 7:00 p.m., he received a call from Paul Ndurema reporting a murder at the home of **Magdalene Chepkorir (PW4)**. He informed the OCS of Londiani, Julius Mwamriz, who dispatched police officers. Together with the police officers, they proceeded to the scene. On arrival, they found the deceased's body in a sheep pen with a head injury. Her underpants were missing. After interviewing **PW4** and **PW5**, they searched the appellant's house, discovering several bloodstained items: a bent kitchen knife, a pair of gumboots, a pair of black trousers with sheep droppings,

a maroon t-shirt, a pair of socks,

and sandals. Also found was a roll of bhang (cannabis sativa). He signed the inventory of the recovered items prepared by the police officers. **PW4** confirmed to them that the knife was from her kitchen. He further testified that he had previously met the appellant during a community registration in May, where the appellant identified himself as Charlie, but without a national identity card. He also stated that post the murder, the appellant contacted him twice to ask about the situation and said he would reveal the killer of the girl, but failed to surrender until his arrest the following Wednesday.

13. **Police Constable Henry Muriti (PW8)** from the Directorate of Criminal Investigations, Londiani, testified that his role was to escort exhibits recovered from a murder scene to the Government Chemist in Nairobi on 18th December 2015. He did not visit the crime scene. The exhibits were collected by **Corporal Linus Mugambi (PW9)** and handed over to **Inspector Musyimi Kelo (PW11)**, who entrusted them to him. The exhibits included a bent kitchen knife, blood and saliva samples from the appellant, a blood sample and swab from the deceased, and various items of clothing belonging to both the appellant and the deceased. **PW8** confirmed that these items were accompanied by an exhibit memo dated 17th December 2015, and he successfully delivered them to the Government Chemist, stating that his involvement was strictly as an escort. During cross-examination, he reiterated that he handled the exhibits only between the DCI office in Londiani and the

Government Chemist in Nairobi.

14. **Police Corporal Linus Mugambi (PW9)** from Londiani Police Station testified that on 13th December 2015, at around 6:00 p.m., he received a call from **John Muchiri Njogu (PW7)**, the Chief of Sorget Location, about a murder at Eastleigh Village. Accompanied by the Chief and the Assistant Chief, he arrived at the scene to find the body of the deceased under a raised sheep pen, with her pants and petticoat at her ankles and a severe head injury causing a pool of blood nearby. He observed blood stains in the kitchen, suggesting the murder occurred there before the body was moved. In the house occupied by the appellant, he recovered clothing items, including a black pair of trousers, a maroon t-shirt, blood-stained socks, and a bent kitchen knife. He prepared an inventory of these items. Upon interrogating the members of the public at the scene, he was informed that the appellant had been home with the deceased while family members attended church. That when contacted, the appellant claimed to be at a video house, but searches were unsuccessful. He later took the body to Molo District Hospital mortuary for post-mortem purposes and handed the evidence to the DCIO, Londiani.

15. On his part, **Police Corporal Stanley Mucembi (PW10)**, testified that he was minuted to investigate a murder reported on 13th December 2015. That on 14th December 2015, following instructions from **Inspector Musyimi Kelo (PW11)**, he coordinated with **PW9** to take over exhibits from the crime

scene, including clothing and a bent kitchen knife. He also recorded

witness statements identifying the appellant as a herdboyer employed by the aunt of the deceased and noting that he was at large. He prepared a post-mortem form and accompanied the deceased's relatives to the mortuary at Elburgon Sub-County Hospital, where he witnessed an autopsy conducted by Dr. Biketi and collected samples for DNA analysis. **PW10** stated that he traced the appellant's Safaricom mobile number to Sigowet and alerted local detectives, leading to his arrest on 16th December 2015 in Sigowet. The next day, he took the appellant for mental assessment before ensuring blood and saliva samples were collected from him for comparison. During cross-examination, the witness admitted that he did not visit the scene of crime and that the appellant's phone numbers were provided by the deceased's relatives, lacking direct confirmation of ownership.

16. **Inspector of Police Musyimi Kelo (PW11)**, who was the last prosecution witness, testified that on 13th December 2015, he received a call from **Corporal Linus Mugambi (PW9)** informing him about the murder of the deceased. He instructed **PW9** to process the scene and arrange for the body to be removed to the mortuary. The next day, **PW9** handed him the evidence collected from the scene, including a bent knife, blood-stained socks, gumboots, a petticoat, plastic shoes, pink pants, a pair of black trousers, an inventory, a t-shirt, and a roll of bhang. He stated that **PW10** assisted with investigations and supervised the post-mortem on 15th December 2015. That on

16th December 2015, the appellant was arrested with the help of the DCIO, Kericho,

transferred to Londiani, and subjected to a mental assessment by a Dr. Langat, who deemed him fit to stand trial. He also stated that the appellant consented to the DNA sampling, and blood samples were drawn. **PW11** testified that upon receiving the report of the Government Analyst, he concluded that the appellant, an employee of the deceased's aunt, defiled the deceased before killing her.

17. Placed on his defence, the appellant testified as **DW1** and gave an unsworn statement. A resident of Tumoiyot, Sigowet/Soin Sub- County, he recalled that on 13th December 2015, he was in Eastleigh Village, Londiani. He had breakfast with **Josephine (PW5), Magdalene (PW4)**, Linda (the deceased), Sandra, Paulo, and Kamau. After breakfast, Kamau and Paulo went to a sawmill while the others prepared to go to church. Josephine asked him to check on Mama Mwaura about some laundry, and then he went to Kamuingi Centre, noting that he received a call from a driver offering some potatoes for sale. After lunch around 1:00 p.m., he saw Magdalene coming from church. He later stayed at a video shop until 3:00 p.m. when Magdalene called, asking him to go home. He declined, intending to go to Londiani. A driver friend then took him to Londiani, and they returned to Sigowet around 7:00 p.m. He went home for supper and went to bed. He maintained that his phone was on but received no calls. He further recalled that on 16th December 2015, he was visited by the Chief and police officers who informed him of the murder. He claimed he was coerced into admitting guilt and was taken

to the

police station, where he reluctantly provided a statement. The appellant denied the murder charge and mentioned living with Kamau and Macharia, asserting that they also wore black long trousers. He presented what he said was his pair of long trousers as evidence, stating that the pair of long trousers adduced in evidence by the prosecution belonged to Kamau. He also explained that Kamau borrowed his gumboots for the sawmill work and asked the court to consider his defence.

18. When the appeal came up for hearing, learned counsel Mr. Alphonse Barrack appeared for the appellant, while Senior Assistant Director of Public Prosecutions (SADPP) Mr. Omutelema appeared for the respondent. Counsel, having filed written submissions, sought to rely on them while offering oral clarification before the Court. We highlight the submissions in the succeeding paragraphs.

19. For the appellant, learned counsel Mr. Barrack relying on **David Njuguna Wairimu vs. Republic [2010] eKLR** reiterated the Court's duty on a first appeal, to wit, the subjection of the evidence presented before the trial court to fresh and exhaustive examination in order to reach its own conclusion, while making allowance for the fact that the trial court had the advantage of hearing and seeing the witnesses. Counsel proceeded to challenge the integrity of the evidence, particularly the items allegedly recovered from the appellant's house by **PW9**. He submitted that the prosecution's narrative

regarding the sequence of events was

illogical and unexplained. Counsel submitted that no DNA profiles linking the appellant to the crime were generated from the vaginal swab, socks, sandals, or the deceased's underpants. He argued that since the prosecution failed to table DNA analysis results from the samples drawn from the appellant, the Court should draw an adverse inference that such results would have been unfavourable to the prosecution's case.

20. Another limb of the appellant's case was the submission by counsel that the trial court disregarded the appellant's defence. Counsel contended that the trial court erred by dismissing his defence as a belated attempt to cast suspicion on others, while abdicating its responsibility to invoke **section 150** of the **Criminal Procedure Code** and summon Kamau, Paulo, or Macharia as witnesses.
21. Counsel challenged the manner in which the appellant's blood and saliva samples were obtained, arguing there was no court order or proper consent on record, suggesting they were forcefully extracted. Related to the foregoing argument, counsel contended that while the DNA results discounted the samples taken from him (as they were not produced), the failure to present his DNA analysis in court was a significant omission that should cast doubt on the prosecution's case.
22. On the unsatisfactory nature of the circumstantial evidence, counsel submitted that the conviction was based on weak and disjointed circumstantial evidence that failed the established

legal

test. Relying on **Chirchir vs. Republic [2021] KECA 1 (KLR)**, counsel argued that for a conviction to be based solely on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis. He also argued that the doctrine of “*last seen*” did not apply, as no witness testified to seeing the appellant last with the deceased. Adverting to the principle of “*last seen*” as enunciated in **Musimbi vs. Republic [2023] KECA 287 (KLR)** that an accused person last seen with a deceased person may be convicted of murder if sufficient explanation is not forthcoming, counsel submitted that the appellant was not the person last seen with the deceased and therefore no burden shifted to the appellant to explain the death.

23. Regarding the penalty meted upon the appellant, counsel submitted that the death sentence was harsh and excessive. While acknowledging the Supreme Court decision in **Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR** that restored the courts’ discretion in sentencing in murder cases, counsel prayed that this Court, being guided by the objectives of sentencing as per the Judiciary Sentencing Policy Guidelines, 2016, and considering that the appellant was a first offender, should interfere and impose a lesser lenient sentence.
24. In opposition to the appeal, counsel for the respondent emphasised the evidence of **PW6**, the Government Analyst,

whose DNA analysis confirmed that the blood on the knife and the

appellant's trousers matched that of the deceased. Counsel submitted that the learned trial Judge correctly evaluated the circumstantial evidence and applied the proper legal principles. Relying on the principles established in **Rex vs. Kipkering Arap Koske & Another [1949] 16 EACA 35**, counsel argued that inculpatory facts were incompatible with the innocence of the appellant. He also referred to **Mibei & 3 Others vs. Republic [1993] eKLR** and **Peter Nyongesa Wanyonyi & 2 Others vs. Republic [2004] eKLR** and submitted that the circumstances proved the case against the appellant. Mr. Omutelema also invoked **section 11** of the **Evidence Act** to urge that since the appellant failed to offer a plausible explanation, the only reasonable inference was that he was guilty.

25. While acknowledging that, as per the provisions of **section 9(3)** of the **Penal Code**, motive is generally immaterial as regards criminal responsibility, counsel submitted that it was relevant in cases resting on circumstantial evidence. Relying on **Joseph Khatiakala vs. Republic [2004] eKLR**, he urged that motive can be inferred from a person's conduct and that the motive for the murder was established in this case.

26. Regarding the sentence, Mr. Omutelema submitted that the death penalty is lawful under **section 204** of the **Penal Code** and was warranted in the circumstances of this case.

27. We have at the beginning of this judgment established our

mandate as a first appellate Court. As was held in **Roba Galma**

Wario vs. Republic [2015] eKLR, for a conviction for the charge of murder to hold, the prosecution must prove: that the death occurred; that the death was caused by the unlawful act of commission or omission of the accused person; and, that the accused person had malice aforethought.

28. In the instant appeal, there is no dispute as to the fact and cause of death. The post-mortem report by Dr. Biketi established that the deceased died as a result of multifactorial causes, including strangulation, penetrating abdominal injuries, and severe head injuries. The report was produced without objection, and we are therefore satisfied that the prosecution proved the first element of murder. Therefore, the critical questions that remain to be answered in this appeal are whether the appellant caused the death of the deceased and whether he had malice aforethought.

29. The case against the appellant rested largely on circumstantial evidence. There was no eyewitness to the murder. The principles governing the evaluation of circumstantial evidence are well settled. Appreciating the scope and applicability of circumstantial evidence, the Court in **Ahamad Abolfathi Mohammed & Another vs. Republic [2018] KECA 743 (KLR)** pronounced as follows:

“However, it is altruism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence, which enables a court to deduce a particular fact from circumstances or facts that

have been proved. Such evidence can form as strong a basis for proving the guilt of an accused person just like direct evidence...

Before circumstantial evidence can form the basis of a conviction, however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence...

In addition, the prosecution must establish that there are no other co-existing circumstances, which would weaken or destroy the inference of guilt."

30. Similarly, in **Chirchir vs. Republic** (supra), the Court reiterated the foregoing principles thus:

"The principles are that; to justify the inference of guilt, the evidence must irresistibly point to accused as the perpetrator of the crime, that inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt, that the chain of events must be so complete that it establishes the culpability of the Appellant, and no one else."

31. We have carefully re-evaluated the circumstantial evidence in this case. From the evidence on record, it is undoubtedly clear that the appellant remained behind alone, washing clothes at the homestead when **PW4**, **PW5**, the deceased, and others left for church on the morning of 13th December 2015. Upon returning home between 2:00 pm and 3:00 p.m., **PW4** and **PW5** noticed that clothes had been removed from the drying line and observed blood stains in the kitchen. When **PW4** called the appellant, he admitted to removing the clothes but claimed he had not seen the deceased. The deceased's body was discovered in the sheep pen, with her pants and petticoat at her

ankles, indicating a sexual assault. The post-mortem examination revealed a torn hymen and

the presence of semen in the vagina. A search of the appellant's house, which he occupied alone, revealed a bent blood-stained kitchen knife, a blood-stained pair of black long trousers, and blood-stained socks among other items. **PW4** confirmed that the knife was from her kitchen. The evidence of the government analyst established that the DNA profiles generated from the blood-stained knife and the blood-stained pair of long trousers matched the DNA profile of the deceased. The analyst also confirmed that the blood on these items was human blood belonging to the deceased. It was also established that the appellant fled the scene and did not return home, but was arrested three days later in Sigowet, where his phone signal was traced to. Prior to his arrest, he contacted **PW7** twice, stating he would reveal the killer of the girl, but failed to surrender.

32. In our view, the foregoing chain of evidence placed the appellant right at the centre of the crime. He was placed proximately to the offence. The weapon used to kill the deceased and the pair of long trousers that had the deceased's blood were recovered from a house that could only be accessed by the appellant. It is indeed true that there is no evidence on record that the appellant was the last person seen with the deceased since she left for the church before the rest. Nevertheless, we agree with the learned Judge that the appellant's defence was an afterthought. He claimed that he had gone to the shopping centre, watched videos, and later travelled to Londiani, then Sigowet. He also alleged that the

long trousers produced in evidence belonged to one Kamau,
who lived

with him, and that his blood samples were forcefully extracted. However, he did not cross-examine any of the prosecution witnesses as to whether there were other men who lived in the homestead or were left behind as everyone else went to church. **PW4** and **PW5** were clear in their testimony that the only person they left at home on the material day and the only person who resided in the house from which the soiled items were retrieved was the appellant. In the instant case, while there was no direct testimony that the appellant was the last person seen with the deceased, the evidence established that he was the only person present at the homestead when the deceased arrived home from the church. **PW4** and **PW5** testified that the appellant was left at home washing clothes. The deceased was also at home, having been seen returning from the church. When **PW4** and **PW5** returned, the deceased was missing, and the appellant had left. The discovery of the deceased's body in the sheep pen, plus the recovery of blood-stained items from the appellant's house, and in particular a knife stained with her blood, leads to the inescapable conclusion that the appellant was responsible for her death.

33. The circumstantial evidence was strengthened by the appellant's conduct after the act. As was held in **Nakwai vs. Republic [2025] KECA 1347 (KLR)**, although inferences of guilt drawn from post- offence conduct must be reasonable and supported by evidence and not just speculative, actions such as attempting to conceal evidence, making false statements,

fleeing the scene or fabricating an *alibi* can suggest that the accused is trying to hide his

involvement in the crime. Here, we have evidence on record that immediately after the crime, the appellant, without the permission of the employer, left for his rural home and declined to come back until he was smoked out by the police. His conduct after the act, therefore, reinforced the circumstantial evidence adduced against him.

34. The failure to generate DNA profiles from some samples and exhibits, including the vaginal swab, does not weaken the prosecution's case. **PW6** explained that the 5-day delay between sample collection and submission could have led to decomposition of the DNA material. This explanation was plausible and unchallenged. Moreover, the DNA profiles generated from the knife and long trousers positively matched that of the deceased, providing strong forensic evidence linking the appellant to the crime. In the circumstances, we are satisfied that the circumstantial evidence in this case meets the standard required by law. The inculpatory facts are incompatible with the innocence of the appellant and are incapable of explanation upon any other reasonable hypothesis. The chain of events points irresistibly to the appellant's guilt.

35. Having found that the appellant caused the death of the deceased, we are required to consider whether the killing was premeditated. **Section 206** of the **Penal Code** provides the ingredients of malice aforethought. In **Watulo & Another vs. Republic [2023] KECA**

1541 (KLR), the Court elaborated on the scope of malice aforethought thus:

“As per section 206 of the Penal Code, some of the factors that will demonstrate that there was malice aforethought are the intention to cause death or grievous harm, or, the knowledge that an act or omission might cause death or grievous harm. As held in Republic vs. Tubere s/o Ochen [1945] 12 EACA 63 malice aforethought can be discerned from the nature of the weapon used; the manner in which it was used; the part of the body targeted; the nature of the injuries inflicted; and, the conduct of the accused before, during and after the incident.”

36. The evidence in this case discloses a brutal and vicious attack on a 14-year-old girl. The post-mortem report revealed multiple injuries: facial bruises, an 8 cm by 6 cm L-shaped scalp cut, an injured cricoid cartilage indicating strangulation, and a penetrating stab wound through vital organs. The deceased was also sexually assaulted, as evidenced by the torn hymen and presence of semen in the vagina. The multiplicity and severity of injuries, the use of a sharp object (kitchen knife), the strangulation, and the sexual assault all point to an intention to cause death or, at the very least, to do grievous harm. The appellant did not merely strike the deceased once; he inflicted multiple injuries on vital parts of her body. We are therefore satisfied that the prosecution proved malice aforethought beyond a reasonable doubt.

37. There was an argument by the appellant that his blood and

saliva samples were forcefully extracted without a court order
or proper

consent. We note that this assertion was not substantiated. Nevertheless, the investigating officer (**PW11**) testified that the appellant consented to the taking of samples. The appellant did not raise any objection during the trial or adduce evidence of coercion. In **Kigen vs. Republic [2025] KECA 131 (KLR)**, the Court held that where an accused person alleges a violation of constitutional rights, the burden lies on him to prove such a violation on a balance of probabilities. The appellant failed to discharge this burden. Moreover, even if there was any irregularity in the collection of samples, the conviction does not rest solely on the DNA evidence. The circumstantial evidence, including the recovery of the murder weapon from the appellant's house and his long trousers, his flight from the scene, and his conduct after the murder, independently points to his guilt. In our view, an irregularity in the collection of evidence does not necessarily vitiate a conviction if there is other credible evidence to support the conviction.

38. Finally, as regards the appeal against the sentence, we note that the trial court considered the appellant's mitigation and the aggravating circumstances of the case, including the fact that the murder was committed in the course of a sexual offence against a vulnerable child. We agree that notwithstanding the fact that the appellant was a first offender, the killing of the deceased during the perpetration of a sexual offence deserved the ultimate sentence of death. Indeed, although the Supreme Court in **Francis Karioko Muruatetu & Another**

vs. Republic (supra),

declared the mandatory nature of the death penalty for murder unconstitutional for violating the right to fair trial by depriving courts of the discretion to consider the mitigating circumstances, the death penalty itself was not outlawed. The trial court properly exercised its discretion in imposing the death sentence, and we find no reason to interfere with it.

39. In the end, we find that the conviction was safe and the sentence lawful. That being the case, this appeal lacks merit and is accordingly dismissed in its entirety.

40. Orders accordingly.

Dated and delivered at Nakuru this 10th day of April 2026.

J. MATIVO

.....
..... **JUDGE
OF APPEAL**

M. GACHOKA C.Arb, FCIArb

.....
..... **JUDGE OF
APPEAL**

W. KORIR

.....
JUDGE OF APPEAL

*I certify that this is
a True copy of the
original*

Signed
DEPUTY REGISTRAR