

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO. E019 OF 2022

REPUBLIC.....DIRECTOR OF PUBLIC
PROSECUTIONS

VERSUS

CHRISTOPHER OWINO JUMA.....ACCUSED

JUDGMENT

1. The accused person herein, Christopher Owino Juma, faces a charge of murder. It is alleged that he murdered Jane Atieno Ogola, on 16th November 2022, at Bumala township, within Busia County, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. He denied the charges, and a trial was conducted. The prosecution presented 11 witnesses.
2. PW1, Owino Odhiambo Boniface, met with the deceased on the material day. He was unable to get transport to go home, at about 9.30 PM, whereupon the deceased offered to accommodate him for the night. They went to her compound, and PW5, Hellen Achieng, opened the gate for them. They got into the house of the deceased, where the deceased began to fold her clothes. After some minutes, the door was kicked in by a tall man, who demanded to know from the deceased who he, PW1, was. The deceased asked him why he was questioning her, yet he never paid rent for that house, and invited him to do as he pleased, whereupon the accused cut her with a panga, between the ear and neck, and she fell down. PW1 attempted to flee the scene, but the gate was locked. He went back to check on the deceased, and found that she had gone to a neighbour's room. He was unable to move her. He went home. He was later informed, that same night, that the deceased had died.

3. PW2, Peter Rufai Ramoya, was a neighbour of the deceased, and came to the scene after it had all happened. He saw the deceased, on the material date and time, lying outside her room bleeding. He reported the matter to the police. He also looked for a doctor, to attend to the deceased. When he went back to the house, he found that the deceased had died. Her body was removed by the police. He did not witness the assault. He stated that the deceased used to live with the accused, but he did not know whether they were married.
4. PW3, Clement Barasa, was the employer of the accused. He stated that the accused had stopped coming to work, and he did not know why, neither did he know what might have happened.
5. PW4, Dr. Dancan Nabuya, was the medical officer who performed postmortem on the body of the deceased. He noted a 15 CM laceration on the head, on the left side near the ear. He defined the laceration as a deep cut wound. There was a skull fracture on the left temporal region, extending to the left occipital region. He formed the opinion that the cause of death was severe head injury, due to penetrating skull injury, secondary to haemorrhagic shock, due to blood loss. He attributed the injury to sharp force trauma.
6. PW5, Hellen Achieng, was the person who opened the gate for PW1 and the deceased. She was a neighbour of both the accused and the deceased. She heard a sound from the house or room of the deceased, and saw PW1 and the accused chasing each other, with the accused holding a panga. She went to the room of the deceased, and found that she had been injured, and she begged her to take her to hospital. Blood was everywhere. The accused put the deceased in the house and left, and another man came in and took care of the deceased. She stated that the accused and the deceased used

to live in the same house. She said the police came after the deceased had died, and removed the body.

7. PW6, Martha Adhiambo, was a sister of the deceased. She testified that sometime in October 2022, the accused telephoned her, and asked her to inform her mother to prepare a grave for the deceased, as she was having an affair with his friend, Evans. She said that he was bitter that he was assisting her, yet she was having an affair with another man. The mother of Evans also telephoned her, telling her that she had seen the accused with a panga, and that he had told her to prepare a grave for the deceased and another for Evans. On the material day that the deceased was killed, she received a telephone call from PW2, saying that the deceased needed help, for she had been cut. She went to the scene, and found the deceased lying in her house, dead, with blood all over. She rushed to the police, who came and took the body away. She stated that the accused and the deceased were not living together, but said they were friends.
8. PW7, Petronilla Aoko Olwenya, was the caretaker of the property, where the deceased was staying. She was telephoned, on 16th November 2022, at night, by another tenant, and was informed that the deceased had been killed. She went to the house, and found blood in the room of the deceased. She went to the police. She said that she did not know the accused, and had never met him. She stated that she did not know who killed the deceased.
9. PW8, No. 98175 Police Constable John Ouma, was based at Sigomere Police Station. He was on duty on 18th November 2022, when the accused came to report that he had injured his wife with a panga, after a disagreement, after he found her with another man. The accused had blood on his clothes. He had explained that he had raised the panga to hit the other man, but he cut the deceased instead. He then went home, to his parents, and his father advised him to report to

the police. PW8 informed his superiors, who contacted the police at Bumala, who, in turn, confirmed the incident, and reported that the woman had died. The accused was arrested, and put in the cells, and was later handed over to police officers from Bumala Police Station.

10. PW9, Godwin Khamala Waliama, was an analyst with the Government Chemist. He had been furnished with a number of exhibits, for the purposes of analysis, being a long-sleeved blouse, a skirt, a jumper and a panga. The 4 items were bloodstained. He obtained an oral swab from the mouth of the accused. There was also a blood sample from the deceased. He confirmed that the blood on the 4 items was of human origin. He obtained profiles from all of them. He established that the blood in all the 4 items was identical, and matched the deoxyribonucleic acid, DNA, profile of the deceased. The same did not match the DNA profile of the accused, which meant that none of the bloodstains, in the 4 items originated from the accused, for they all originated from the deceased.

11. PW10 was Tina Awino Madowo, a Senior Resident Magistrate, who had recorded a confession from the accused, on 21st November 2022. She testified that the accused had informed her that the deceased had entered her house with another man. He went and knocked the door, to that room, but they refused to open. He broke the door, and found the 2 just talking. He had entered the house while carrying a panga from his workshop, and he began to struggle with the man. He aimed the panga at the man, but it hit the deceased, instead, on the head, and she fell to the ground, and the man fled. The accused told her that he also fled the scene, and ran away to his rural home at Sigomere, where he confessed to his father, that he had killed the deceased. His father escorted him to the police station at Sigomere, from where he was transferred to Bumala. He was informed at Bumala, that the deceased had died. He stated

that the deceased had been his girlfriend for some time, and that each of them had their own house, in the same compound.

12. The production of that confession statement was objected to, by the accused. I delivered a ruling, on the objection, on 30th June 2025, dismissing the objection, and admitted the confession statement as an exhibit.
13. PW11, No. 838442, Police Corporal Wycliffe Chema, was the investigating officer. He detailed all the steps that he took in the course of the investigations, and produced the exhibits that he had collected in his investigations.
14. On 19th December 2025, I delivered a ruling, where I found and held that a *prima facie* case had been established against the accused person, to warrant his being required to present a defence. A defence hearing was conducted. The accused person made a sworn statement, but he did not call witnesses.
15. The accused, Christopher Owino Juma, testified as DW1. He identified the deceased as his wife, with whom he was living. He stated that, on that material day, he got home, and found the door to their house locked, and there was no one inside. As he did not have the key, he went to a hall, to watch football. When he went back to the house, he found that the padlock had been removed, but the door was locked from the inside. He knocked at the door, but it was not opened, so he decided to break it down. When it opened, there was darkness, so he switched on the light. He saw the deceased with another man. When he asked her who that man was, she did not respond, but the man started talking. He established that the 2 had had a child.
16. The man began to fight him. He stated that, as it was his house, he rushed to where his panga was, so as to defend

himself. As the man was overpowering him, he decided to cut him with the panga, but the man evaded it, and the panga landed on the deceased instead. The man fled. The deceased fell. He tried to assist her, by tying her head with his jumper. He called PW2, who telephoned PW11, who promised to come to the scene. As he waited for PW11, PW1 mobilised *boda boda* operators, who came to the scene, armed with assorted crude weapons, forcing him to flee for his life. He went home to Sigomere, and found his father, who consulted the local Assistant Chief, who, in turn, advised that the matter be reported to the police. He made a report at the Sigomere Police Station, on 18th November 2022, and explained what had happened. He was handed over to officers from Bumala Police Station. It was the police who informed him that the deceased had died.

17. At the close of the oral hearings, the accused person, through his Advocate, Mr. Were, filed written submissions, which I have read, and noted the arguments made in them.
18. The offence of murder has 4 elements: proof of the death, the cause of it, the role of the accused in the causation, and malice aforethought. A conviction should be founded upon these elements being positively proved.
19. On proof of the death, PW2 and PW6 saw the body at the scene. PW11, the investigating officer, was among the police officers who removed the body from the scene. PW4, the medical officer, performed postmortem on the body. Proof of the death was overwhelming.
20. On the cause of the death, PW4 did an autopsy on the body, and noted a single serious injury. There was, on the face of it, a laceration or deep cut wound on the head, which revealed, upon examination, a penetrating skull fracture or injury. The conclusion was that death happened because of

severe head trauma. The injury caused blood loss, which caused haemorrhagic shock to the system.

21. On the role of the accused, in the causation, there were eyewitnesses, presented by the prosecution. PW1 was at the scene. It was his presence at the house or room with the deceased that brought the accused to the scene. He was the eyewitness to the assault. He saw the accused hit the deceased with a panga. The accused himself conceded that it was his act of wielding a panga that caused injury to the deceased. He said so in his sworn defence statement. He told the same to the police at Sigomere, where he had surrendered himself, according to PW8. He also stated so to PW11, when he rearrested him, at the Sigomere Police Station. He narrated the same to PW10, who recorded his confession. So, in terms of causation, it was the accused who caused the death of the deceased, after he struck her with a panga on the head.

22. On malice aforethought, the same is defined in section 206 of the Penal Code. It is about intention to kill, and knowledge that certain acts could cause death, yet the perpetrator engages in them, regardless. The intention could be direct, where the perpetrator voices or utters or expresses that he was going to kill. It could be indirect, to be implied from the conduct of the perpetrator, which causes or leads to the death.

23. The deceased herein was killed by the accused with a panga. He struck her on the head with it. He stated, in his defence, that he did not mean to hit her, for he was aiming at PW1, and she was only hit by mistake. If that was so, did it exonerate him? I do not think so. The fact that he was armed with a panga, which was a deadly or dangerous or offensive weapon; and the fact that the blow on the head of the deceased killed her almost instantaneously, meant that he had an intention to either kill the person that the blow was

aimed at, or to cause grievous injury to that person, or to commit some felony on that person. It would also mean that he had knowledge that a blow, of the kind he intended, could cause death or grievous harm, but he was careless or reckless or indifferent to the consequences. Regardless of whoever was the blow aimed at, whether PW1 or the deceased, the circumstances pointed to an intention to kill, or cause grievous harm to that person, or to commit a felony with respect to that person, or there was indifference to the consequences that would flow from landing the blow. All that pointed to presence of malice aforethought.

24. Did it matter, whether the blow was aimed at PW1, and not the deceased? It did not. The principle of transferred malice applies. If the malice was aimed at PW1, but the person who got fatally injured was another, who was not the intended victim, there would still be malice. For the malice directed at PW1 would be transferred to the actual victim, in this case, the deceased. Whatever the accused intended to do, to PW1, was unlawful, and the fact that the intended fate did not befall PW1, but the deceased, did not soften the intention of the accused. The crime that the accused intended to commit against PW1 ended up being a crime against the deceased, by way of transferred malice.

25. According to PW1, the fatal blow was never aimed at him, but at the deceased. For when the accused entered the room, he directed his anger at the deceased, not at him. He demanded some answer from the deceased, who verbally fired back at him. According to PW1, the response from the deceased incensed the accused, and he hacked her with the panga, which was in his hand. The version from the accused was that he was not armed when he got into the house, for the panga he used was already in the house. He only went for it after PW1 began to overpower him, after they got into a physical struggle. According to him, he was tussling with

PW1, and not with the deceased, for the deceased did not talk to him.

26. Which of these versions, between that of PW1 and that of the accused, is to be believed? Whichever of them is the correct or true one, the fact of the matter remains that the accused armed himself with a panga, and whacked the deceased with it on her head, so hard that it penetrated through her skull, giving her zero chances of survival. Whether he came in with the panga, or it was somewhere in the house, would be of little difference. If he grabbed the panga from somewhere within the house, to fight PW1 with it, would still not be much of a defence. There was no evidence that PW1 was armed with anything, that would have required the accused to equally arm himself, to counter potential deadly force from PW1. The use of the panga, in the manner that it was used in the circumstances, appear to have been disproportionate to any danger that the accused faced, from PW1, if at all. The choice of the panga, as a weapon, in the circumstances, the manner it was used, and the nature of the injury it inflicted, would go into the state of mind of the accused, and of his intentions.

27. There is no contest, that the accused caused the death of the deceased. The only issue would be whether he did so with malice aforethought. From the material before me, I am not persuaded that the accused acted out of self-defence, for PW1 was not armed with any weapon. The testimony of PW5 depicted PW1 as a man on the receiving end, for she saw him being chased around by the accused, who was armed with a panga. The accused was chasing PW1 around the compound, after he, the accused, had already gravely injured the deceased with that panga. His act, of choosing to chase PW1 around, instead of attending to the deceased, who he, the accused, had gravely injured, allegedly by mistake, points to his state of mind and intentions.

28. The accused appeared to hint at provocation, coming from both PW1 and the deceased. The deceased, being his alleged wife or girlfriend, by daring to bring another man to their house, and PW1, by daring to visit the house of another man, where he lived with his wife, the deceased. The issue was not addressed in the final written submissions, but it is what came out in the testimonies of PW8, PW10 and PW11, and from the mouth of the accused himself. There was inadequate evidence that the deceased was a spouse of the accused, to justify application of the defence of provocation. There was also inadequate evidence that the house or room had been rented by the accused. The evidence pointed to that house or room as belonging to the deceased, and that the accused was just one of her many male friends.
29. There was evidence that the accused surrendered himself to the police, and even confessed to the killing, and explained its circumstances. That could suggest lack of malice. It could also suggest remorse. The evidence is that the accused did not surrender to the police at Bumala, where it all happened, and where he appeared to be even known to some of the police officers, such as PW11. Instead, he fled to his home, at Sigomere, in another County. He did not go to the police directly, but only upon counsel from his father and the local Assistant Chief. His act of surrender and confession did not wash away the malice with which the killing was carried out.
30. Overall, the evidence established malice aforethought, on the part of the accused, in the causation of the death of the deceased, from the choice of the weapon used to cause the death, the manner in which the said weapon was used to inflict the fatal injury and the nature of the injury inflicted.
31. In view of everything said above, I do hereby find and hold that the prosecution has established, beyond reasonable doubt, that the accused person herein, is guilty of

unlawfully causing the death of the deceased, Jane Atieno Ogola, on 16th November 2022, contrary to sections 203 and 204 of the Penal Code. I, accordingly, convict him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.

32. For the purpose of sentencing, I do hereby direct the Busia County Director of Probation and Aftercare Services to look into the antecedents of the accused, and get the views of the community and the family of the victim, and thereafter file a pre-sentence report, within 14 days. There shall be a sentencing hearing, on 6th May 2026. Orders accordingly.

**DELIVERED, VIA MICROSOFT TEAMS, DATED AND
SIGNED, AT MILIMANI, NAIROBI, ON THIS 10TH DAY OF
APRIL 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.

Mr. Were, instructed by Fwaya Masakhwe Were & Company, Advocates for the accused person.