

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CRIMINAL CASE NO. E016 OF 2022**

**REPUBLIC ..... DPP**

**=VERSUS=**

**SILAS KIPNGETICH SANG ALIAS JESHI .....  
ACCUSED**

**JUDGMENT**

- 1.** The Accused herein **Silas Kipngetich Sang Alias Jeshi** was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 15<sup>th</sup> April 2022 at unknown time at Kabenes village Soy Sub-County within Uasin Gishu County in the Republic of Kenya murdered **Hellen Jesoimo Biwott**.
- 2.** The accused pleaded not guilty to the offence setting in motion a full trial for the Prosecution to disapprove his innocence as provided for under Article 50 (2) (a) of the Constitution. The lead Prosecution Counsel in these proceedings is Ms Sidi Kirenge whereas Mr. Ogongo is the Defence Counsel.

**The summary of the Prosecution Case**

- 3.** The case for the Prosecution is always tested on a standard and burden of proof of beyond reasonable doubt which is usually based on direct and circumstantial evidence. The following witnesses were summoned for purposes of proving existence or non-existence of facts for the offence of murder facing the accused person in consonant with Section 107(1), 108 and 109 of the Evidence Act.
- 4. PW1** was Michael Cheruiyot who told the Court that he is a Professional Qualified Plant Engineer and the deceased in this

incident happens to be his own biological mother. It was his evidence that on the material day, he was engaged elsewhere but the deceased and the accused who is her employee were at home attending to their daily chores. It was the evidence of PW1 that the accused was the farm caretaker dealing with issues of livestock and other incidentals in both the homestead and the farm. He recalled that on 13<sup>th</sup> April 2022 he was the Presiding Officer at a UDA polling station but prior to that he left both the accused and the deceased at home with no major incident to cause anxiety. The witness vividly recalled that on the 14<sup>th</sup> April 2022 he received a telephone call while at the Polling Station from a neighbor. That is when he came to learn that there was something unusual which required his attention. He arrived at the homestead and witnessed motor bikes, vehicles and many people surrounding the deceased who was lying on a mattress and blood oozing from the neck. The Police Officers and other members of the neighborhood had arrived at the scene in response to the screams which had been raised following the tragic incident at their home. Thereafter the body of the deceased was transported to Moi Teaching and Referral Hospital Mortuary for a postmortem examination.

5. The next witness was **PW2** one Brilliant Jebet who also told the Court that she knows both the deceased and the accused person as neighbors. That during the period under review she knew the accused as the caretaker of the deceased livestock and they both lived within the same homestead. It was further the evidence of PW2 that on the night of 14<sup>th</sup> April 2022 she heard the screams from that neighborhood of the deceased and this forced her to step out of the house so as to reconfirm the sources of the unfamiliar screams and take further action. However, in the course, she also decided to inform her cousin by the name Anderson. They proceeded to the scene and tried to call out the name of the deceased but nobody was answering. In the same

circumstances, the witness told the court that they tried to make enquiries from the accused on what had happened and his explanation was that the deceased had refused accommodation to her mother who had come visiting. This chain of events according to PW2 went on until now when there was serious suspicion that something amiss had happened to the deceased. The rest of the neighbors were informed and

on gaining entry they came into contact with the deceased's body with streams of blood oozing out and some of it could be seen within the same room.

6. The next witness of the Prosecution happened to be **PW3** one Anderson Kipkemei whose chronology of events was similar with that of PW2 because they were in the same company.
7. The other witness of Prosecution is **PW4**, David Kirorei Kiplagat who is a resident of Meriet a center in which he operates a Bar. The witness recalled vividly that on the night of 14<sup>th</sup> April 2022 at around 10.00 pm he was approached by the Accused person who was seeking accommodation or a room spend a night but unfortunately his lodging was fully occupied. He therefore advised him to seek alternative accommodation in the facilities nearby. He however came back again to the same bar and now as a borrower of Ksh 500 with the security being his phone. The witness acceptance on the offer to loan out the accused the Ksh 500 was on condition that he sells the phone to him and not to offer it as a security. The accused parted with the phone and the loan of Ksh 500 was procured from the witness and that deal was sealed. It is only soon thereafter the witness was being sought by the Police with regard to this same mobile phone belonging to the accused. He was therefore ordered to record the statement to that effect with regard with the contact he made with the accused and the transactions carried out involving his phone and the loan of Ksh 500 a borrowing by the accused.

- 8.** The other witness of importance to the Prosecution was Carlos Kipngetich a resident of Kapere and a farmer of maize crop. It was his testimony on oath that the deceased was his neighbor and the accused was what he could describe as a farm manager. According to **PW5** on the 15<sup>th</sup> April 2022 he was woken up by one Anderson who was anxious that the security lights to the homestead of the deceased had been off for some time and this was not a usual occurrence. It was also his evidence that the deceased had not been seen moving around and when they went into her homestead her body was lying on a mattress and blood oozing out. This was now a Police case necessitating them to visit the scene so as to commence investigations. That is how he ended up recording the statement to form part of the trial bundle of the proceedings against the accused.
- 9.** Last but not least is **PW6** by the name Micah Kiprono who described himself as a hustler and a friend to the accused. He told the court that on the material day he was looking after livestock of a neighbor to the deceased and as the accused also continued to be the shepherd to the livestock and property of the deceased as he has always done before the fateful incident. According to PW6, in the course of taking care of the livestock of both neighboring homesteads, the accused person enquired about the existence of a particular knife which they usually use to slaughter sheep. In his evidence PW6 informed the court that at the material time he was the one keeping the knife and did pass the information to the accused. The said knife apparently recovered by the police and on being shown the physical knife the witness positively identified it. It was further the evidence of PW6 that on this fateful night accused had intimated to him that he had gone to the trading centre to buy some meat so that he can cook some food. However, he did not come back and the following day there were screams from the homestead of the deceased and the members of the public thronging that home to establish what actually had

transpired. He happened to be one of the members of the neighborhood to visit the home and on arrival it was confirmed that the deceased is dead. The Police Officers were invited to secure the scene and thereafter removed the body which was taken to Moi Teaching and Referral Hospital for purposes of postmortem examination.

**10.** Finally, the Prosecution witness happened to be Dr. Keitany a qualified Pathologist and licenced Medical Doctor who was invited to carry out the postmortem report in reference to the deceased Hellen Biwott on the 19<sup>th</sup> April 2022. In his testimony PW7 took the Court through the positive findings in so far as the physical injuries suffered by the deceased. The same were captured as follows by the Pathologist:

- *Respiratory system: 2x0.5cm right mandibular (submandibular) stab injury deep, extending to perforate, trachea just below thyroid cartilage. Trachea entries bloody secretions and clots.*
- *Head: Right parietal-occipital temporal scalp hematoma.*

As a result of the examination, he formed the opinion that the cause of death was asphyxia due to upper airway obstruction due to stab injury to neck and trachea.

**11.** This matter proceeded in earnest and on the verge of it all the accused person moved the court emotionally that he needed to say something and in being permitted to do so, gave a chronology of his family all hinged at the curse of death. What were the interconnecting factors? That his father had killed someone at one time, he was tried, convicted and sentenced to imprisonment. He unfortunately died while serving sentence. That curse did not stop there, it also claimed one more person, his own uncle. He also suffered the same fate like his father and on circumspection, retrospection and reflection from his contrite heart and spirit this death of the deceased has perpetually haunted him and he can't resist any more than seeking forgiveness to her family and as a

first step he was ready to own up for his sins and acts by admitting the offence of killing the deceased.

- 12.** This turnaround of events was a culmination of the previous weeks application by the accused to enter into a plea-bargaining agreement pursuant to Section 137(A-O) of the Criminal Procedure Code but which was declined by the State and the victim's family. The elements of the offence were reiterated by this Court to the accused person as defined under Section 203 of the Penal Code in the presence of his legal Counsel. The answer by the accused was to the effect that he admits the offence of killing the deceased and he owns up to the family for forgiveness. With this persistence, a plea of guilty was recorded by this Court and the corresponding facts were given as deducible from the evidence of the seven witnesses.
- 13.** The brief facts for the Prosecution case anchored in the seven witnesses who have so far testified were that on the 15<sup>th</sup> day of 2022 at Kabenes village in Soy Sub- County the accused person had been employed previously as a farm caretaker more so looking after livestock of the deceased. That on the material day the accused was a resident within the homestead of the deceased as a worker recognized by the family to assist the deceased in taking care of his farm including the livestock. It so happened that in the chain of events of 14<sup>th</sup> and 15<sup>th</sup> of April 2022 the accused in company of another worker by the name Micah (PW6) taking care of the farm neighboring the deceased explained some strange actions by the accused. This included the accused enquiring about the whereabouts of the knife usually used for slaughtering sheep. The witness (PW6) honestly and without any iota of doubt divulged the physical place where the accused person could access the knife which was positively identified in Court as one of the weapons which may have been used to occasion threats or stab wounds targeting the body of the deceased. This was established by the Pathologist in his postmortem report in which

he made the following observations; that the deceased suffered stab injury to the right neck measuring 2x0.5cm, 4cm injury from midline and 4cm from submental protuberance. The Pathologist described this wound as deep exiting to the trachea just before the thyroid cartilage. That this incident as captured by the Prosecution is that the neighbors heard the screams from the homestead of the deceased but it is until the 15<sup>th</sup> of April 2022 when they suspected that there is something extremely unusual given the silence in that home which usually has a lot of movements and activities. That is when that suspicion forced them to gain entry to the homestead only to come into contact with the body of the deceased lying on a mattress and blood oozing from the neck. In the course of the chain of events of 14<sup>th</sup> and 15<sup>th</sup> of April 2022 the accused who was within the homestead was confronted by the neighbors to answer the question as what was the source of the screams. That is when he gave a candid answer that the deceased had denied his mother who had come visiting access to accommodation facilities of the home. That this triggered a conflict hence the source of the screams. Nevertheless, the accused was finally to be arrested and arraigned in court with the offence of murder and during the investigations the physical evidential material being a knife and a pair of shoes No. 9 positively identified to be those of the accused by PW6 were sent to the Government Analyst Kisumu who on analysis arrived at the following findings:

**Items:**

*On the 25th day of April, 2022, at the laboratory of the Government*

*Chemist's department Kisumu, the following items were received:- a) A kitchen knife with modified wooden handle; in a brown envelope marked "A".*

*b) Blood sample of Hellen Jesoimo Biwott (deceased) in a vacutainer tube marked "B".*

- c) *Vaginal swab marked "C".*
- d) *A pair of shoe (size 9) branded 'N' ("D1"- left; "D2"- right) in a green carrier bag.*

**Report:**

- a) *The stains on the vaginal swab (item "C") tested negative for presence of seminal fluid.*
- b) *The knife (item "A") and the pair of shoe (item "D1" and "D2") were all moderately stained with blood of human origin.*
- c) *The DNA profiles generated from the above listed items are tabulated and produced at the end of this report.*

**Issues relating to genetic relationship:**

*Every person has a unique DNA which is acquired from his/her parents who contribute half each from biological mother and father. By examining the DNA from a blood sample or any body fluid, it is possible to determine the origin of the blood or body fluid given the blood samples or body fluid of the suspects.*

**Conclusion and opinion:**

*Based on the findings, the DNA profiles generated from the blood stains on the knife (item "A"), pair of shoe (item "D1" and "D2") and from the stains on the vaginal swab (item "C") are all identical and match the DNA profile generated from the reference sample of Hellen Jcsoimo Biwott (deceased).*

- 14.** This evidence from the Government Analyst Report was submitted in evidence under Section 48 of the Evidence Act in support of the Prosecution case. Given the strength of the facts as again read and explained to the accused person as at the time of changing plea he went ahead to clarify and admit that they represent a true picture on what transpired on the material day.

**15.** Having heard learned Counsel for the parties, the entire case of the prosecution rests on circumstantial evidence, as there is neither any eye-witness nor any judicially admissible confession. It is well settled law that where the case rests entirely on circumstantial evidence, the chain of evidence must be so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the Appellant-accused within all human probability (**See Hanumant vs. State of Madhya Pradesh, (1952) 2 SCC 71**). In **Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116**, this Court outlined five essential principles, often referred to as five golden principles, which must be satisfied for circumstantial evidence to conclusively establish the guilt of the Appellant accused:

*“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.....*

*(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*

*(3) the circumstances should be of a conclusive nature and tendency,*

*(4) they should exclude every possible hypothesis except the one to be proved, and*

*(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

*To prove the charges, the prosecution has laid emphasis on recovery of weapon of assault (stone as well as the gandasa) and gold chains belonging to the deceased, on the basis of statement (Ex. P-23) given by the Appellant accused while in custody.*

**16.** The other case law principles which attest to the Prosecution having established the standard and burden of proof are as entrenched as follows:

- **Proof Standards:** Nyakundi v Republic [2003] and Nyamongo v Republic (2019) emphasize that facts must be incompatible with innocence; mere suspicion is insufficient.
- **The "Last Seen" Doctrine:** Jackson Namunya Tali v Republic [2017] and Nyaga v Republic (2020) illustrate that while being last seen with a deceased is strong evidence, it requires a complete chain of events to warrant conviction.
- **Chain of Evidence:** Republic v Mohammed & Another [2019] and Republic v Odhiambo (2018) reinforce that the evidence must be tested for any breaks, using forensic evidence to connect the accused to the crime.

**17.** With this brief summary of the case as build up by the Prosecution, the accused was convicted on his own plea of guilty.

**18.** The matter then proceeded to the second phase of the trial which is sentencing hearing. First and foremost, under the **Muruatetu** dicta the accused person was invited through his legal Counsel Mr. Ogongo to file brief written submissions which were captured as follows:

### **Remorseful**

The accused person is remorseful for his actions leading to the unlawful death of Hellen Chesimo Biwott. The accused person has hand written an apology letter dated 25<sup>th</sup> September, 2025 to the family of the deceased and a copy of the letter was handed over to Mr. Michael Cheruiyot Biwott (PW1) in the course of the hearing. Furthermore, the accused person humbled himself and orally sought for forgiveness from the family of the deceased and the Court. Unfortunately, once a life is lost there is no reverse gear.

### **First Time Offender**

The accused person has no priors. It is unfortunate that the accused person in the process of enjoying himself by imbibing alcohol (napoleon brand) overindulged to the extent that he lost control of his faculties leading to the untimely demise of Hellen Chesimo Biwott.

### **Reformed**

The accused was arrested on 23<sup>rd</sup> April, 2022 and he has since then in the state's custody at Eldoret G.K. Prison where he has been exposed to different artistry crafts and he has been learning and gaining invaluable knowledge which he hopes he will have an opportunity to put to use for the betterment of the society at large. The accused person has been attending the Christian teachings offered by the chaplaincy of the prison services and he is learning the art of trying to maintain peace in the society.

### **Age**

The accused person is a youth of 28 years. All persons are generally most active and productive in their youthful years. The accused person being a youthful adult he is able to give his active years to develop the society once released from prison upon serving his sentence as will be passed by this Court.

### **Penalty**

Section 204 of the Penal Code provides the punishment for murder to be death. We are alive to the jurisprudential developments in the Kenyan Stratosphere specifically the famous Muruatetu case which has chastised the mandatory nature of the death penalty in crimes of murder.<sup>8</sup> We opine that, taking all the above mitigating factors into consideration this case is a proper candidate for the accused person to be incarcerated for a definite period of time to enable him fully atone for his crime and to facilitate the necessary

rehabilitation. We propose an incarceration period of 15 years to that effect and our position is buttressed by the case of.

i. DKC-vs-Republic [2014] KECA 230 (KLR); Where the court sentenced the Accused Person to ten (10) years imprisonment. ii. JKK-vs-Republic [2013] KECA 241 (KLR); the Court of Appeal overturned a death sentenced and sentenced the Accused Person to twelve (12) years imprisonment.

**19.** As part of the requirement of the law and under the Victim Protection Act they were invited to participate during the sentence hearing and a nominee of the family by the name Michael Cheruiyot Biwott deposed as follows:

*My name is Michael Cheruiyot Biwott ID NO. 22111689, and I am writing this statement on behalf of my entire family following the brutal murder of Hellen Jesoimo Biwott. That I am related to the deceased, Hellen Jesoimo Biwott, by virtue of being her son and the third child in a family of seven hence have authority to make this statement as follows: Since our father passed away in 2020, our mother has been our sole parent, serving as the primary source of love, care and guidance for both her children and her grandchildren. She was the heart of our home, and her loss has left a void that can never be filled. The emotional trauma we are suffering is profound. We have been left completely without parents, and the brutal nature of her death has shattered our sense of safety. Family members terrified to return to our own home, as the trauma of what happened there haunts us everyday. The details of how our mother was taken from us are unbearable. She was murdered by her own employee, someone she entrusted to help her, who stripped her naked, strangled and stabbed her in the neck. The fact that the accused stole her money and phone after the killing proves to us that this was a premeditated and intentional act. Because of the calculated and cruel circumstances surrounding her*

*death, we find it impossible to forgive the accused. We do not and will not consider or accept any apology offered, as no apology can account for such a deliberate act of violence. We ask that the court impose a life sentence without any possibility of release. Only through the said proposed punishment can our family feel that a degree of justice has been served for the woman who meant everything to us.*

- 20.** Having convicted the accused person on his own plea of guilty to the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, this Court now turns to the solemn duty of imposing an appropriate sentence. The sentence of death as prescribed under Section 204 of the Penal Code remains on the statute books, but the Supreme Court of Kenya in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR fundamentally altered the sentencing landscape in murder cases by striking down the mandatory nature of that sentence and restoring to the trial court the full discretion to impose a sentence proportionate to the circumstances of each case. It is within that framework that this Court now exercises its sentencing discretion.
- 21.** The objectives of sentencing as captured in the ***Sentencing Policy Guidelines 2023*** are instructive and must guide the exercise of this discretion in totality. These objectives encompass:
- a. *“Retribution: to punish the offender for his/her criminal conduct in a just manner.*
  - b. *Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*
  - c. *Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.*
  - d. *Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.*

- e. Community protection: to protect the community by incapacitating the offender.
- f. Denunciation: to communicate the community's condemnation of the criminal conduct.
- g. Reconciliation: To mend the relationship between the offender, the victim and the community.
- h. Reintegration: To facilitate the re-entry of the offender into the society.

**22.** Alongside these objectives, the Supreme Court in *Muruatetu* identified the following mitigating considerations as being material to sentencing in homicide cases:

- “(a) age of the offender;*
- (b) being a first offender;*
- (c) whether the offender pleaded guilty;*
- (d) character and record of the offender;*
- (e) commission of the offence in response to gender-based violence;*
- (f) remorsefulness of the offender;*
- (g) the possibility of reform and social re-adaption of the offender;*
- (h) any other factor that the Court considers relevant.”*

**23.** In applying these principles to the instant case, this Court has carefully considered the submissions of learned Defence Counsel Mr. Ogongo on mitigation. The accused is a young person aged 28 years, is a first-time offender with no previous criminal record, entered a plea of guilty, has expressed remorse through an apology letter and orally before this Court, and has reportedly engaged in reformatory programs during his period of pre-trial custody at Eldoret G.K. Prison. These are factors that this Court has noted and weighed. The accused's guilty plea is an acknowledgment of the truth of the Prosecution's case and does, to some extent, spare the family of the deceased the agony of a prolonged full trial.

- 24.** However, a plea of guilty, while a factor in mitigation, does not and cannot diminish the gravity and heinousness of the offence itself. The Court cannot divorce itself from the facts of this case, which paint a disturbing and deeply troubling picture. The deceased, Hellen Jesoimo Biwott, was a woman who extended trust and hospitality to the accused by giving him employment and accommodation within her own homestead as her farm caretaker. She treated him with the dignity of a person within her domestic sphere. In grotesque betrayal of that trust, the accused deliberately sought out a knife by inquiring about its whereabouts from PW6, armed himself with it, and on the material night used it to stab the deceased, inflicting a deep stab wound that perforated her trachea just below the thyroid cartilage, causing her death by asphyxia due to upper airway obstruction. Beyond that, as confirmed by the Victim Impact Statement of PW1 Michael Cheruiyot Biwott, the deceased was stripped naked and her money and phone were stolen after the killing, a conduct that speaks unmistakably to premeditation, cruelty, and an utter lack of remorse at the time of commission of the act.
- 25.** The Court is in agreement with the submission of the victim's family that the circumstances of this killing were calculated and cruel. A person who was the sole surviving parent to seven children and the heartbeat of her home was snuffed out by the very person she had sheltered. The Victim Impact Statement graphically captures the devastation left in the wake of this crime. The family members now live in fear and trauma. The home that was once a place of warmth has become a place of horror. The psychological and emotional injury to this family is profound and irreparable.
- 26.** Considering the aggravating factors in their totality, the brutal and premeditated nature of the killing, the desecration of the deceased's body, the betrayal of trust by an employee against his employer, the theft of the deceased's property following the murder, and the devastating impact on seven bereaved children, this Court is firmly

of the view that a lengthy custodial sentence is not only warranted but is demanded by the interests of justice, retribution, deterrence, and the protection of the community. The right to life guaranteed under Article

26 of the Constitution is inviolable, and those who extinguish that right in circumstances as callous as these must feel the full weight of the law.

**27.** Accordingly, and having weighed all mitigating and aggravating factors as set out above, the accused person Silas Kipngetich Sang Alias Jeshi is hereby sentenced to **forty (40) years imprisonment**. Pursuant to the provisions of Section 333(2) of the Criminal Procedure Code, the period of four (4) years spent by the accused in pre-trial detention shall be credited against this sentence. The Deputy Registrar of the High Court at Eldoret shall accordingly generate a committal warrant incorporating a credit period of four (4) years against the sentence of forty (40) years imprisonment.

**28.** Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 10<sup>TH</sup> DAY OF  
APRIL, 2026**

.....

**R. NYAKUNDI**

**JUDGE**