

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. E012 OF 2021

REPUBLICPROSECUTOR

VERSUS

RINARD KAMERINO ALLAN.....ACCUSED

JUDGMENT

1. **Rinard Kamerino Allan**, (hereafter the Accused) is charged with **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars state that on the **1st day of May 2021, at Saina Estate within Kajiado Central Sub-County in Kajiado County**, he murdered **Cynthia Chepsang Chepkuto** (hereafter the deceased).

2. The Accused denied the charges and the case proceeded to full trial. The prosecution case through six witnesses was as follows. In the material period, **Zipporah Nyambura Gitau (PW4)** lived in house no. 3 next to the house occupied by the Accused (house no 2), within

the area known as Dumpsite Estate or Saina Dump Site Estate. On the night of 30.4.2021, **PW4** heard what sounded like furniture being moved around in the Accused's house. The following morning, she saw the Accused locking his door and leaving alone, which was unusual since he normally left in the company of his companion, **Cynthia Chepsang** (the deceased).

3. Later, **PW4** and other neighbors, noting that the Accused's window was not locked, peeped into the house and saw that household items therein in disarray. They informed the village elder, **Robert Lemayian Sekuta (PW1)** who came to the scene and then called the police. Eventually the police came in the company of the Accused who had been traced and arrested. He had keys to the house which was opened, and the deceased's body was found therein.
4. During cross-examination, she confirmed she had been neighbours with the Accused and deceased for less than two months, and had not witnessed quarrels between them, and on the material night, had only heard what sounded like furniture being moved around. She emphasized she did not hear any screams.

5. On her part, another neighbour to the Accused, **Annah Wanjiru Njeri (PW5)** testified that she lived in house no. 4 at the Dumpsite Estate. On 30.4.2021, she arrived home at 7:00pm, and on the next morning, her child whom she had sent out on an errand returned to inform her that **PW4** was calling. She joined **PW4** and other neighbours, and learned that the Accused had left alone and locked his house from outside. When one neighbour peered through the window, she reported seeing an object covered in a bedsheet, which she suspected to be a body. The village elder and police later came. The body was confirmed to be of the deceased.
6. In cross-examination, she stated she had only been the Accused's neighbour for one month, often saw him drunk, and had not witnessed any quarrel between him and the deceased. She relied on **PW4's** account that the two usually left together, and explaining that she lived some distance from the Accused's house, she admitted that she did not hear any noises, or witness anything directly on the material night. But confirmed seeing household items scattered in the Accused's house on the next day.

7. According to **PW1**, he was on 1.05.2021 alerted by one **Kangethe** to proceed to the area known as Dump Site Estate to a house where it was suspected that a person had been killed. On reaching the house, which was a single room, he looked through the window and noted an object under the bed, and not having access into the house which was padlocked, he used a long stick to probe the object under the bed which was covered in a bed sheet. It appeared to be a human body. Soon, he was joined by the chief and together, they notified the police at Kajjado Police Station while also making inquiries on the identity of the owner of the house. Acting on information received, they traced the said owner to a drinking den where he was found seated with others, drinking.
8. Shortly thereafter the police arrived and arrested the person whom he identified as the Accused. He was taken to the scene and when instructed to open the house, he produced keys, which he handed to the police who opened the house, entered and retrieved a body.
9. The scene was documented by **Cpl. Erick Marangera**, and **Cpl. Gabriel Koskei (Scenes of Crime Officer (PW2))** produced the photographs and a report on his behalf. The photographs taken on

1.05.2021 at the murder scene in Saina Dump Site Estate, Kajiado town included: photograph no. 1 being a general view of the scene; photograph no. 2 a close-up view of a door locked with a padlock; photographs no. 3 -4 being images of the body wrapped in beddings; photograph no. 5 showing the uncovered body of the deceased; photographs no. 6 -7 being close-up views of the deceased's head. The seven photographs were produced as **Exh. 1(a)**, with the accompanying report as **Exh. 1(b)**.

10. One of the officers who attended the scene was **Sgt. Julius Kivuva**, also the investigating officer (**PW6**). He testified that on 1.5.2021, he received a report of a murder involving the Accused and his girlfriend as victim. He accompanied the OCS and other officers to the scene. On the way there, the officers met members of the public, including the village elder **PW1**, who had arrested the Accused. At the scene of the crime, the landlord identified the Accused's house, which was locked with two padlocks. When the Accused handed over two keys to the said house, **PW6** used them to open the padlocks on the door. Inside, they found the deceased's body which was wrapped in a

bedsheet, under the bed, with a stone placed nearby. The house appeared in disarray, suggesting a commotion.

11. **PW6** recovered several exhibits including the two padlocks with two keys (**Exh. 2**); a bedsheet (marked Exhibit A – **Exh. 3**); bloodstained piece of paper (marked Exhibit B – **Exh. 4**), blood-stained pants (marked Exhibit D – **Exh. 6**), blood stained trouser (marked Exhibit E – **Exh. 7**), Blood sample of the Accused marked Exhibit F1- F2; samples of blood from the deceased marked G; small stone (**Exh. 5**), and the exhibit memo which accompanied the marked exhibits to the government analyst (**Exh. 8**). The defence not objecting, the witness also produced the postmortem report (**P. Exh. 9**), which indicated the cause of death to be inter alia, head injury due to blunt force trauma, and the government analyst's report (**Exh.10**).

12. In cross-examination, **PW6** confirmed that the Accused person was already under arrest by members of the public when he first met him. He admitted he was not present during the postmortem and did not know the exact nature of the head injuries sustained by the deceased. He also confirmed the stone found at the scene had no bloodstains and reiterated that the house was in disarray, consistent with a

struggle. Further, that the Accused handed him the keys used to unlock the padlocks to his house door.

13. **CPL Henry Kyalo (PW3)**, testified that he was attached to DCI Kajiado Central and became involved after receiving a report of a murder incident at Dump Site Estate on 1. 5.2021. He went to the station, where the OCS and **PW6** later returned with the suspect, who had been arrested by members of the public following a report by the village elder. Having made the necessary application for time to complete investigations, he attended the postmortem examination of the deceased, **Cecilia Chepsang Cheruto**, on 4.5.2021 at Kajiado County Referral Hospital and received a blood sample taken at the postmortem. He also facilitated the suspect's mental assessment conducted on 19.5.2021. **PW3** confirmed that he was present during the extraction of the deceased's blood and ensured it was safely kept pending analysis.

14. During cross-examination, **PW3** clarified that his role was limited to escorting the Accused to court, attending the mental assessment, and attending the postmortem examination.

15. Upon being placed on his defence, pursuant to the ruling of **Mutuku J** on 17.01.2025, the Accused elected to give sworn evidence and did not call a witness. His statement was to the effect that he resided in Tassia, Nairobi, and was formerly employed as a driver with the Ministry of Labour. He said he met the deceased in 2015 at a bar called Peki in Kajiado and the two began a romantic relationship. Which was interrupted when the deceased became pregnant by another man, a *boda boda* operator, and moved to Nakuru. During that period, they broke off contact.
16. However, in 2018, the couple resumed their relationship and began cohabiting in Kajiado at the material house. The Accused described their relationship as affectionate but marred by the deceased's drinking habit and her tendency to disappear from home for days at a time. Often leading to neglect of household duties and financial strain, as she would use money or household items to procure alcohol, sometimes *chang'aa*, from friends in Majengo. Triggering frequent quarrels and fights between them.
17. With regard to the material evening, he testified that the deceased returned after an unexplained absence of four days. The couple met

in Kajiado town and spent the day drinking together from 3:00pm until late evening. At around 7.30pm, they bought food and drinks to take home. Upon arrival at their bedsitter, they ate and continued drinking. Later, around 11:00pm, when he confronted the deceased about her four-day absence, an argument broke out, escalating to a prolonged physical fight, during which the combatants threw household items, including cooking pots, at each other. He claimed that despite the fight, he did not notice any injuries on the deceased, while he himself only felt slight pain in his arm. They eventually went to sleep.

18. Waking up at 4:00am, he discovered that the deceased's body was cold and lifeless. He was shocked and confused, thus locked the house and left for his usual drinking place. He insisted that it was not his intention to flee, noting that when police later found him around 10:00am, about 1.5 kilometers from his house, he was openly seated and did not resist arrest.

19. During cross-examination, he admitted that neighbours could have heard the noise arising from the couple's night fight. He acknowledged that their fights were frequent and often violent, due to

the deceased's drinking. He conceded that a head fracture, which the postmortem later identified as the cause of death, could only result from a severe blow to the head.

20. He also admitted that after discovering the death, he did not inform anyone or report to the authorities, explaining that he was confused. He mentioned a futile attempt to contact a neighbour for a duplicate key after locking the house.

Submissions

21. The Accused through his counsel filed submissions dated 22.9.2025. After restating the testimonies of the prosecution witnesses, counsel submitted that the prosecution failed to discharge its burden of proof as required in criminal cases, relying on the principle in **Woolmington v DPP 1935 AC 462**. To the effect that the burden always rests on the prosecution to prove all elements of the offence beyond reasonable doubt, and never shifts. That in this case, the prosecution was obligated pursuant to Sections 203 and 204 of the Penal Code, to establish the fact and cause of death, that the death resulted from an unlawful act by the Accused, and that the Accused acted with malice aforethought. The defence argued that although

death and cause were established, the prosecution failed to conclusively prove malice aforethought.

22. Regarding the latter element, the defence contended that there was no evidence of premeditation or intention to kill. That the testimony of **PW4** and **PW5** pointed to a volatile relationship characterized by frequent drunkenness and arguments between the Accused and the deceased. Moreover, that evidence concerning the household furniture in disarray and the condition of the scene suggests a physical fight between them on the material night rather than a deliberate, one-sided attack. The defence therefore contended that the deceased may have sustained fatal injuries during the struggle, negating the existence of malice aforethought.

23. Moreover, the Accused's state of intoxication on the material date was available as a defence under Section 13 of the Penal Code, which provides that intoxication may serve as a defence where it impairs the accused's ability to understand his actions or to form an intent. It was therefore contended that the couple was intoxicated at the time of the fight, and the Accused's actions were driven by impaired judgment rather than conscious intent. Relying on **Moses Gitonga Macharia v**

Republic 2011 KECA 23(KLR) for the principle that intoxication can negate *mens rea* where it significantly affects mental capacity.

24. The defence posited further that the circumstances of the case support the defence of provocation as contemplated by Sections 207 and 208 of the Penal Code. Citing evidence demonstrating that the Accused was emotionally triggered while questioning the deceased about her recent disappearance, leading to a heated argument and physical confrontation. Thus, given their history of conflict, alcohol consumption, and the deceased's recent disappearance and conduct, the defence asserted that the Accused acted in the heat of passion before having time to cool down. The defence counsel therefore submits that, at most, the offence would amount to manslaughter rather than murder.

25. Emphasizing the volatile relationship, mutual intoxication, and lack of clear intent, counsel asserted that the prosecution case does not meet the threshold for the offence of murder. And points instead to a spontaneous fight between two intoxicated individuals. In conclusion, counsel urged the court to either acquit the Accused or reduce the charge to one of manslaughter.

Analysis and Determination

26. The offence of murder is created by Section 203 of the Penal Code which provides:

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”.

27. In **Chela v Republic [2025] KECA 49 (KLR)** the Court of Appeal spelt out the ingredients that must be proved beyond reasonable doubt by the prosecution, in a murder case as follows:

- a) The fact of the death of the deceased;
- b) The cause of such death;
- c) Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person, and;
- d) Proof that the said unlawful act or omission was committed with malice aforethought.

28. Earlier in the case of **Roba Galma Wario vs Republic [2015] eKLR** the Court of Appeal after reiterating the above ingredients also

stated that ***"For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional."***

29. The court having reviewed the evidence on record found that there was no dispute concerning the fact and cause of death of the deceased herein. It was not in dispute that in the material period, the Accused and the deceased being lovers were living together in the Accused's house at Dump Site Estate, and were together on the night of 30.04.2021 in the said house where, the deceased was found dead on the morning of 1.05.2021. Her body had been wrapped in a bedsheet and placed under the bed. At the time of the discovery, the Accused had left the house, having locked it using a padlock.

30. The body according to the postmortem report (**P. Exh. 9**) bore the following injuries:

- **facial oedema with subcutaneous bruises;**
- **multiple facial bruises, contusion;**

- **subcutaneous contusion on the right hand and bilateral forearms;**
- **multiple subcutaneous chest bruises and contusions;**
- **Central cyanosis marked on the fingernails;** and
- **Head - multiple scalp subcutaneous oedema contusion and haematoma; parietal skull fracture and features of increased intracranial pressure.**

31. The opinion of the pathologist was that death was due to the head injury caused by a blunt object, as well as the multiple subcutaneous injuries.

32. Regarding the question whether the Accused by an unlawful act or omission caused the death of the deceased, the prosecution case largely rested on circumstantial evidence, there being no eyewitness to the commission of the offence. In **Ahamad Abolfathi Mohammed and Another v Republic [2018] eKLR**, the Court of Appeal stated as follows concerning such circumstantial evidence:

“However, it is a truism 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 a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -

"It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial."

33. The Court of Appeal in the above case proceeded to spell out the conditions in which such circumstantial evidence can be used as the basis of a conviction as follows:-

“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 subject person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v R* Cr. App. No. 32 of 1990, this court set out the conditions as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Subject; iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else”.

34. In the present case, **PW4** testified that having woken up on the material night at about midnight to check on her child, she heard what sounded like furniture being moved around, emanating from the house of the Accused, but did not hear any screaming. On the following morning, she saw the Accused leaving the house alone and locking it with padlocks. Suspicious, **PW4** and other neighbours including **PW5** who observed that the deceased had not been seen, peeped into the house through the window and noted that the house was in disarray. They were presently joined by **PW1** who noted the presence of what seemed to be a human body under the bed, a fact confirmed when police came to the scene.

35. On his part, the Accused stated in his evidence that he and the deceased having met earlier on 30.04.2021 had been drinking from 3.00pm before going home, where they continued to drink. He admitted that the deceased had died on the material night following what he described as a drunken fight between them, which, had erupted after he had questioned the fact that the deceased had been away for four days, returning on the 30.04.2021. He claimed to have discovered the deceased's lifeless body in the early hours of the

morning, but rather than report the incident, he locked the house and left citing a state of confusion. He was later arrested at a local drinking place.

36. There is no evidence suggesting the involvement of any third party; the Accused had exclusive access to and control of his house. His conduct of concealing the body and failure to report the death, speaks volumes on his role in the death. These, viewed in light of his admissions regarding the previous night, establish beyond reasonable doubt that it is the Accused who by an act of assault caused the death of the deceased. He asserts that this happened in the context of a fight. The court will consider these claims along with other related evidence.

37. The Accused's defence statement implied the defence of provocation, and he gave a long account detailing incidents of the deceased's alleged waywardness in the course of their relationship. Including begetting a child with another man and upon commencement of their cohabitation, excessive alcohol consumption and unexplained disappearances from the home, the latest allegedly lasting four days prior to the material date.

38. He further stated that while he did not raise the deceased's latest incident of disappearance at the drinking place earlier on 30.04.2021 due to the presence of other people, upon reaching home, he raised the matter with the deceased, which led to what he described as a fight that culminated in her death.

39. Provocation is defined in Section 208 of the Penal Code as follows:-

“(1) The term "provocation" means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person, who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master and servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered”.

40. In **Chela vs Republic** (supra) the Court of Appeal stated regarding the defence of provocation that:-

'The test in respect of the defence of provocation varies from case to case. Addressing this issue in the case of Wero vs Republic (1983) KLR 549, this Court held that:

"Where a person accused of killing another raises the defence of provocation, it is a question of fact whether the accused, in all the circumstances of the particular case, was acting in the heat of passion caused by grave and sudden provocation when he killed that person..."

41. In **Moses Kadenge Dadu Vs. Republic (2017) KECA 125 (KLR)**

the Court of Appeal stated as follows:

"Moreover, the defence of provocation can only arise where it is shown that the circumstances were such that an accused was deprived of self-control or was acting under diminished responsibility. The applicable test was set out by the House of Lords in **Director of Public Prosecutions vs Camplin [1978] 2 All ER: -**

"Whether the provocation was sufficient to make a reasonable man in like circumstances act as the

defendant did. Not a reasonable boy or a reasonable lad; it was an objective test – a reasonable man”.

42. From the Accused’s own account, he had deliberately delayed discussing the deceased’s four-day disappearance earlier on the material date when the two met, because they were in a drinking place with others. And only raised the issue upon arrival at his house in the night. This alleged deliberate action suggests that the Accused maintained his power of self-control and had been ready to wait for the opportune moment to confront the deceased about her latest disappearance. While the deceased was not married to him or in any long-term relationship with him, from his account, the Accused appears to suggest that she was answerable to him for her movements.

43. Be that as it may, the Accused did not state how the fight started or what precisely happened during the said discussion, whether words spoken to him by, or being struck by the deceased, to provoke him. While he claimed that the discussion escalated to a physical fight in

which the two parties threw projectiles at each other, he stated that beyond a pain in the hand, he suffered no injuries at all himself. On his arrest, early on the next date, the witnesses did not describe any injuries, nor did he suggest the presence of any to them during cross-examination.

44. Moreover, the court found it unusual that two people in the same house could engage in the kind of fierce fight described by the Accused without exchanging any words. According to **PW4**, who on all accounts was a truthful witness, all she heard from the house of the Accused at midnight was what sounded like the sound of moving or dragging of furniture. She was clear that she did not hear screaming. It is not possible that she would have failed to hear any exchange of words between the alleged combatants. Or screams if any rent the air. The first witness to see the Accused locking his door on the next morning, **PW4** did not describe him as being injured, and indeed the police later traced him at a drinking den.

45. In contrast, the deceased suffered multiple blunt injuries accompanied by subcutaneous bleeding to the face, chest, head, both hands and scalp. In addition to a deep skull fracture leading to severe

haematoma and raised intracranial pressure causing her death on the same night. From the photographs of her body produced at the trial and post mortem report, it appeared that the deceased's head had been struck with a heavy object inflicting the head fracture.

46. If indeed there was a fight involving projectiles as alleged by the Accused, it is remarkable that only the deceased suffered injuries, and severe ones at that. In the court's considered view, there is no evidence that the Accused acted in the heat of passion due to a grave and sudden provocation from the deceased, leading him to act in the manner he did. Even if we believe for argument's sake, the version of events presented by the Accused, it is difficult to fathom what insult or action by the deceased could have provoked the Accused to respond so viciously.

47. Before this court, the Accused made a case that his relationship with the deceased was volatile, and fraught with fights and quarrels. Other than confirming that the Accused and deceased seemed to drink regularly, both **PW4** and **PW5** denied witnessing any incidents between them prior to the material date. Besides, if indeed the deceased was the wayward and irresponsible party in the relationship

as the Accused portrayed her in his evidence, he as the supposed reasonable party ought to have taken the step of breaking off from her.

48. Moreover, regarding the material incident, the Accused, having allegedly discovered by morning that the deceased had died, did not report to police. Instead, having locked the door, he locked the door, leaving the body concealed in a bedsheet under the bed and went to the drinking den. That is barely the conduct of a man who had an unfortunate fight with his lover the previous night. In the court's considered view, there was no such fight as described by the Accused, on the material night; what occurred was a one-sided assault of the deceased by the Accused that left her fatally injured.

49. The Accused in his defence emphasized that he and the deceased had been drinking since 3:00pm on the material date and continued doing so upon their arrival home that night, suggesting that both were intoxicated at the material time. In the court's considered view, the defence of intoxication was equally not available to the Accused in this case.

50. In order to successfully invoke a defence of intoxication, the conditions outlined in **Section 13 (2) of the Penal Code** must be met:-

“Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and -

a. the state of intoxication was caused without his consent by the malicious or negligent act of another person;

b. the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission. (emphasis added)

51. The Accused gave a vivid account of his version of the events prior to, and during the incident in question which shows he was mentally conscious and in his sound frame of mind, at all material time. His own narration of events negates the above conditions; he was aware

of what he was doing and in a sound state of mind at all material times, and in any event had voluntarily imbibed alcohol.

52. As regards malice aforethought, Section 206 of the Penal Code defines the ingredients thereof to include: -

“(a)An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

b. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

c. An intent to commit a felony;

d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

53. In the case of **Republic vs Tubere s/o Ochen [1945] 12 EACA**

63, cited by the Court of Appeal in **Chela vs Republic** (supra) the

Court identified circumstances from which an inference of the existence of malice aforethought could be made to include:

“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 either a single stab wound or multiple injuries; the conduct of the accused before, during, and after the incident.”

54. The Court of Appeal (in **Chela’s** case) further stated that :-

“In the case of *Rwabugande vs Uganda (Criminal Appeal 25 of 2014) [2017] UGSC 8*, the court held that *“Circumstances from which an inference of malicious intent can be deduced are: (a) The weapon used, (b) the part of the body targeted i.e. whether it is a vulnerable part or not, (c) the manner in which the weapon was used i.e. whether repeatedly or not, or number of injuries inflicted and (d) the conduct of the accused before, during and after the incident i.e. whether there was impunity.”*

See also **Nzuki vs. Republic [1993] KLR 171.**

55. In the present case, during the material night, the Accused inflicted severe injuries on the deceased, using a blunt weapon or weapons. The post mortem report indicates that as a consequence, the deceased sustained inter alia a deep fracture to the skull caused by a blunt object, and that her death was due to hemorrhage and increased intracranial pressure caused by the injury to the brain. Not to mention other multiple injuries to the face, hands, chest and scalp resulting in under-the-skin bleeding and swelling. The events following the assault are equally disturbing.

56. From **PW4's** description of what she heard on waking up, and the scene photographs showing the deceased as fully dressed, it would seem that the deceased had already succumbed to her injuries or been mortally wounded by the time the witness heard sounds akin to dragging of furniture in the Accused's house. Hence the absence of screams or voices. The sounds of dragging furniture most likely emanated from the Accused's attempts to throw household items around his house in a bid to project the occurrence of a fight. While

simultaneously concealing the body by wrapping it in a bedsheet and pushing it under the bed.

57. On the next day, locking the door behind him, he had left for the venue where police later traced him, as he probably plotted how to later dispose of the body. In the court's considered view, the Accused's defence before this court is no more than a continuation of his attempt to falsely reframe the events of the material night, in order to escape responsibility for the death of the deceased.

58. The Accused from his narrative appears to paint the deceased as a drunkard, a wayward and irresponsible woman and to suggest that he was entitled to question, and even to chastise the deceased concerning her conduct, despite what appears to have been a loose relationship between them.

59. That said, as the Court of Appeal stated in **John Mutuma Gatobu vs. R [2015] eKLR** while discussing **Section 206** of the **Penal Code** :-

"There is nothing in that definition that denotes the popular meaning of malice as ill will or wishing another harm and all the related negative feelings. Nor, for that

matter, is it to be confused with motive as such. Our law does not require proof of motive, plan or desire to kill in order for the offence of murder to stand proved, though the existence of these may go to the proof of malice aforethought."

60. Considering the extensive and severe nature of the injuries sustained by the deceased, and the Accused's proven subsequent conduct, this court has no doubt that the Accused killed the deceased with malice aforethought.

61. In the result, the court is satisfied that the prosecution has proved the ingredients of the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code beyond any reasonable doubt. Accordingly, the Accused is found guilty and convicted as charged.

DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 16TH DAY OF APRIL 2026.



C. MEOLI
JUDGE

In the presence of:

For the State: Ms. Kambaga

For the Accused: Ms. Pirianoï h/b for Mr. Nairi

Accused: present

C/A: Lepatei

ORIGINAL