**REPUBLIC OF KENYA**
**IN THE HIGH COURT OF KENYA AT NYAMIRA**
**(CHERERE-J)**
**HCCRC 19 OF 2019**

**BETWEEN**
**REPUBLIC…….**
**…….PROSECUTOR**
**AND**
**JAMES OGWAGWA NYAKINA…… 1ST ACCUSED**
**JACKSON KIRUI KIPNGENO……..2ND ACCUSED**

**J U D G M E N T**

1. In the Occurrence Book of Nyamatoki Police Post dated 20th August 2019, there is an entry recording that Amos Kemosi Kereri had been assaulted by unknown persons. This case arises from the events surrounding that entry.

2. In determining the charge before it, the Court must approach the evidence with the utmost care, mindful that the determination concerns the unlawful taking of human life. The Court's task is not to be persuaded by the most elaborate narrative, but to identify the account that withstands careful scrutiny when measured against the totality of the evidence, and to determine whether the entry in the Occurrence Book accurately reflected what transpired on the night of 19th August 2019.

3. It is against that background that two police officers attached to Nyamatoki Police Post were brought before this Court to answer to a charge of murder arising from those events.

4. It is against that background that the two officers attached to that post were brought before this Court to answer to a charge of murder.

5. The 1st Accused, James Ogwagwa Nyakina, was as at 19th August 2019 a Corporal of Police attached to Nyamatoki Police Post in Nyamira County. The 2nd Accused, Jackson Kirui Kipngeno, was a Police Constable at the same post. Both are charged jointly with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on 19th August 2019, at Keera Location of Nyamira South Sub-County within Nyamira County, the accused persons jointly murdered Amos Kemosi Kereri.

6. Both accused persons denied the charge and pleaded not guilty on 17th September 2019. The trial commenced before Hon. Maina J. and was thereafter transferred, in succession, to Hon. Ochieng J. and then to Hon. Okwany J., before reaching this Court. At each judicial transfer, the accused persons were informed of their rights

under Section 200 of the Criminal Procedure Code and elected on each occasion to proceed from the stage the case had reached.

7. The prosecution closed its case on 01st April 2025 having called fourteen witnesses. On 31st July 2025, Hon. Okwany J. ruled that both accused persons had a case to answer. On 28th January 2026, before this Court, both accused gave unsworn statements and called no witnesses. Written submissions dated 10th February 2026 were filed by Maeche & Company Advocates on behalf of the 1st Accused. The 2nd Accused and the prosecution filed no submissions and rely on the evidence on record.

8. This Court has considered with the greatest care the evidence of the 14 prosecution witnesses who came before it. What emerges from their testimony, taken as a whole, is not merely a sequence of legal events. It is the account of how officers clothed with the authority of the State dealt with a citizen in their custody, and of what followed thereafter.

9. It falls to this Court to set out that story, as the evidence discloses it, and to pronounce judgment.

10. On the evening of 19th August 2019, in the small trading centre of Nyamatoki in Nyamira County, an

unremarkable night was about to become the beginning of the end of a young man's life. Amos Kemosi Kereri, known to those who loved him as Kereri, was a bodaboda motorcycle rider. He was known in the village, engaged to a young woman named Vane Kerubo. That evening, he sat with Vane on the veranda of Small Joint Bar. He could not have known that before dawn he would be handcuffed, beaten, and left for dead.

11. The night did not begin at the bar. It began on a dark roadside, where a community policing volunteer named Anson Kurao Omagwa, returning from church-guarding duties with a small patrol group, came upon a peculiar sight. Anson Omagwa (PW1) had served alongside the officers of Nyamatoki Police Post for approximately three years. That evening, walking home after completing his duties, he and his companions, among them Patrick Magata Ong'ondo (PW3), another vigilante, encountered the 1st Accused, Corporal Nyakina, lying in a roadside ditch, gripping a stick. No explanation was offered; instead, the 1st Accused directed them to accompany him to Small Joint Bar.

12. At the veranda of the bar, they found Kereri sitting with Vane Kerubo Nyakundi (PW2), a waiter at Small Joint Bar. She and Kereri had stepped outside together, as

couples do. What happened next was witnessed by both Anson (PW1) and Patrick Magata Ong'ondo (PW3), as well as by Vane herself.

13. Without offering any explanation or stating the basis for the arrest, the 1st Accused raised his stick and struck Kereri across the head. He then smashed the electric bulb on the veranda, plunging the area into darkness. He ordered both Kereri and Vane to their knees. He kicked Vane, who retreated in fear into the bar. The 2nd Accused handcuffed Kereri. Vane described watching the 2nd Accused whip Kereri with what she identified as an electricity cable, while the 1st Accused kicked him and directed those gathered to move inside.

14. Vane ran to find her manager, Gladys Kemunto (PW11), and told her what had happened. By the time Gladys looked outside, Kereri was gone, handcuffed and marched into the night toward Nyamatoki Police Post by the two accused persons, the vigilantes following behind.

15. Nyamatoki Police Post ought to have been a place of safety, a government institution bound by law to protect persons brought into police custody. Instead, on that night, it became a place where Kereri was subjected to violence.

16. Anson (PW1) and Patrick (PW3) were present inside the post. Both watched what followed. The 1st Accused repeatedly struck Kereri on the legs with a wooden stick until it broke. Thereafter, the 2nd Accused took another stick and struck him across the back. A third officer present, PC Chepkwony, protested verbally. He said it was wrong. But he did not stop it. He did not intervene.

17. Patrick Magata Ong'ondo (PW3) testified to one further detail of significance that the following morning the 1st Accused approached him and stated that Kereri had “fainted.” He then warned Patrick to withdraw from the matter. This Court notes the significance of that instruction. An innocent man does not warn witnesses to stand aside. The 1st Accused knew what had been done. He knew what it meant. And he moved, at once, to manage that knowledge.

18. When the beating was over, the vigilantes were escorted home. Kereri was left at the post, handcuffed, beaten, but still alive. PW1 confirmed that when they departed, Kereri was seated and conscious, though in pain.

19. Later that same night, Gladys Kemunto (PW11) closed the bar and went to the post with Vane, Vane's colleague Faith, and another waitress. They found Kereri seated on

the floor inside the police post. He appeared, to Gladys, to be in reasonable condition. He was able to speak and told her that he did not know why he had been arrested. The 1st Accused allowed Gladys to speak with him briefly, then directed them all to return at 9.00 a.m. the following morning. The women were escorted back. Kereri remained alone, in custody, at the post.

20. Vane, standing outside that police post in the dark, tried to find a way to reach Kereri's mother. She did not have her contact. She attempted instead to call a friend, but there was no answer. She was thereafter escorted back to the bar without Kereri.

21. The morning of 20th August 2019 tells its own story, not of violence, but of concealment; of a truth being quietly managed by the men responsible for it.

22. At approximately 7.30 a.m., PC Chepkwony went to the home of Samuel Ojwang (PW4), a bodaboda rider whom he knew as a neighbour. He told Samuel that a man named Amos Kereri had come to the station while drunk, and asked him to transport Kereri home. He said nothing about a beating. He said nothing about why a man who had "come in drunk" could not walk out on his own feet.

23. Samuel proceeded to Nyamatoki Police Post. He found Kereri in a condition that no description of drunkenness could account for. The young man appeared to be asleep, as though merely dozing, except that he could not be woken. He was not speaking. He was unresponsive. The 1st Accused and PC Chepkwony lifted Kereri and placed him on Samuel's motorbike. Chepkwony had to support Kereri for the entire journey. Kereri did not stir. He did not speak. He made no sound at all.

24. Because heavy rain had made the road to Kereri's home impassable, they left him at the gate of his uncle Ndemo's compound. Children were present there. Chepkwony and Samuel instructed the children to call Kereri's mother and to prepare porridge for him. Samuel was paid KES. 100 for the ride. He then transported Chepkwony back to the station. Kereri was left at the gate in an unconscious state and in need of medical attention.

25. Immediately thereafter, the 1st Accused telephoned Evans George Momanyi (PW5), Kereri's uncle, who worked at Gianchore Health Centre nearby. The 1st Accused asked Evans whether he knew a man named Amos Kereri. Evans confirmed that Kereri was his nephew, the son of his sister, Grace Magoma. The 1st Accused then asked him to tell Kereri's mother to bring him tea or porridge at the station,

because the boy was "cold." Nothing more. No mention of a beating. No mention of injuries. No mention of a young man who could not be woken. Just the word "cold."

26. Evans sent a neighbour's child to call Grace. When Grace arrived at the health centre, Evans relayed the message. She returned home to prepare food for her son.

27. On her way home, Grace Magoma John (PW6) encountered Joan Nyamoita Ndemo (PW13). Joan had herself witnessed what was brought to the gate that morning. She testified that Kereri had been brought home unconscious by a police officer and a bodaboda rider. She saw no visible external injuries on his body. She told Grace what she had seen, that her son Kereri had been left at the gate, unmoving, not speaking.

28. Grace abandoned the porridge and ran towards the gate. On arrival, she found her son Kereri lying near it, his eyes closed and unresponsive, appearing to be asleep. She called his name and shook him, but he did not open his eyes or respond. She attempted to call PW5 to confirm whether this was the same child he had asked her to take porridge to, but the call did not go through. The previous night, Kereri had asked Vane to contact his mother, Grace. By the time she arrived at the gate, he was already

unresponsive. Grace then called her brother, Wilfred Obare Momanyi, in panic to inform him that her son was unresponsive and would not wake.

29. Wilfred Obare Momanyi (PW7), one of Kereri's uncles, came at once. He too tried to rouse the young man. He could not. He did not know what had caused his nephew's condition. He knew only that Kereri could not be woken and that the situation was grave. Grace's screams had brought neighbours, and together, neighbours and family carried Kereri to Gianchore Health Centre.

30. Evans Momanyi (PW5) was still at Gianchore Health Centre when the family arrived carrying Kereri. He called the doctor. The doctor examined Kereri and found his condition critical. He referred him immediately to Nyamira County Referral Hospital. Evans saw his nephew again the following day. The deterioration was visible.

31. Samuel Ojwang (PW4) visited Kereri at Nyamira County Referral Hospital. What he had not been able to see clearly in the grey light of the early morning was now visible, injuries on Kereri's back and ribcage, the skin in those areas turned black. He was in the company of Kereri's uncles, Ndemo and Ondari Momanyi. When they asked the doctor about Kereri's condition, the doctor told

them to wait. They waited. They went home. They did not see Kereri alive again.

32. Grace followed her son to Nyamira County Referral Hospital. She was told there that he had been placed on a drip to remove alcohol from his system. She waited. His condition did not improve and it was eventually determined that alcohol had nothing to do with his state.

33. At Nyamira County Referral Hospital, Dr. Kelvin Nyamonge (PW12) received Kereri in an unconscious state. The admission notes recorded "alcohol intoxication" and described the deceased as a "known alcoholic." Dr. Nyamonge clarified during re-examination that those descriptions were derived entirely from the history provided by relatives who had themselves been misled by the narrative constructed at the police post. No blood alcohol test was conducted. No clinical examination supported the notation. It was the echo of a false story, not the product of medicine.

34. A CT scan told a different truth. It revealed acute brain oedema, swelling of the brain from blunt force trauma. Kereri developed aspiration pneumonia. His condition deteriorated beyond what Nyamira County Referral Hospital could manage. He was transferred to Kenyatta

National Hospital. Dr. Nyamonge acknowledged, when pressed, that delays in conducting the CT scan and in arranging the transfer had occurred, and that earlier intervention might have improved Kereri's prospects of recovery. He nonetheless made clear that the underlying cause of Kereri's condition was traumatic.

35. At Kenyatta National Hospital, Kereri was placed on oxygen. He could not speak. He could not open his eyes. On 28th August 2019, nine days after he was assaulted, Kereri died.

36. Back at Nyamatoki Police Post, someone had to account for the condition in which Kereri had left police custody. The 2nd Accused, made an entry in the Occurrence Book. He recorded that Kereri had been assaulted by unknown persons.

37. Inspector Daniel Katusi Barnabas (PW8) was the first officer to investigate the matter internally, initially as a complaint against police officers for assault. He was shown the Occurrence Book entry. He testified, plainly, that he did not believe it. His own inquiry from witnesses established that the 1st Accused had struck Kereri on the head and ordered him to kneel, and that the 2nd Accused had whipped him. When Kereri's condition deteriorated and he died, Inspector Barnabas escalated the matter to

the Directorate of Criminal Investigations for murder investigation.

38. Inspector Silas Owino Owenga (PW14) testified on behalf of Inspector Munga, the lead investigating officer. He explained how the matter evolved. What began as a complaint against police officers became a murder investigation after 28th August 2019, when Kereri died. Inspector Munga visited both Nyamira County Hospital and Nyamatoki Police Post. He attempted to recover the weapons described by witnesses, the wooden sticks and the rubber whip, but was unsuccessful. He recorded further statements and subsequently arrested both accused persons together with PC Chepkwony. The accused were later charged after being found fit to stand trial and PC Chepkwony was designated as a prosecution witness.

39. PC Chepkwony, however, was bonded for multiple hearing dates and failed repeatedly to appear. He was last traced to Nairobi Central Police Station, but had since deserted his duty post and could not be contacted. He was untraceable and therefore did not testify.

40. The family member who formally identified the body for the purposes of the post-mortem examination was

Andrew Guto Momanyi (PW10). It fell to him to stand before the body of his relative and confirm, for the record of this Court, that this was indeed Amos Kemosi Kereri.

41. Dr. Edwin Kwalong (PW9) conducted the post-mortem examination. His findings are among the most decisive in the entire record. The post-mortem examination revealed abrasions on the buttocks and lower back, defence injuries on the left forearm, a laceration on the head, lung contusions, brain swelling, haemorrhages around the kidneys, and evidence of asphyxia. The cause of death was asphyxia due to lung contusions and acute lung injury resulting from blunt force trauma consistent with assault

42. This Court has observed the anatomical precision with which these findings correspond to the eyewitness testimony. Vane (PW2) described the 2nd Accused striking Kereri on the back with what she identified as an electricity cable. The post-mortem found lung contusions, abrasions on the lower back, and haemorrhages around the kidneys. Anson (PW1) and Patrick (PW3) described the 1st Accused striking the deceased on the head at the bar and continuing the assault at the post. The post-mortem found a head laceration and brain swelling. The defence injuries on the left forearm are consistent with a man who, at some

moment before he was fully restrained, raised his arm to protect himself.

43. The post-mortem findings confirmed, in medical terms, the assault inflicted on Amos Kemosi Kereri.

44. Both accused persons elected to give unsworn statements and called no witnesses.

45. The 1st Accused denied the assault entirely. He stated that Kereri came to the station voluntarily, was placed under observation, and left the following morning in the company of others while alive. He said he later learned later that Kereri had fallen ill.

46. The 2nd Accused was more candid about what he witnessed. He acknowledged that the 1st Accused directed the group to the bar, struck the deceased, and ordered him to kneel. He attributed the handcuffing to PC Chepkwony. He stated that after the group arrived at the police post, the 1st Accused sent him back to the bar, and that he later retired to his own residence. He denied striking the deceased.

47. In his submissions, learned counsel for the 1st Accused advanced the following five principal arguments in written submissions:

1) **That causation was not proved because the deceased left the post alive and subsequent events broke the chain**
2) **That PW1's evidence was uncorroborated and unsafe**
3) **That an adverse inference should be drawn from the failure to call PC Chepkwony**
4) **That contradictions among prosecution witnesses raise reasonable doubt**
5) **That malice aforethought was not established.**

48. This Court now bears the solemn duty of rendering its final determination on the charge of murder facing both Accused persons. The familiar image of the blindfolded woman, holding the scales and the sword, remains instructive at this decisive stage. The blindfold underscores the Court's obligation to remain unmoved by emotion, sympathy, or public sentiment; the scales require a careful and balanced evaluation of the entirety of the evidence, both for the prosecution and the defence; and the sword symbolises the authority of the law to pronounce a verdict grounded strictly in proof. The issue for determination is therefore whether, upon a comprehensive re-assessment of all the evidence on record, the prosecution has discharged its burden of

establishing each essential element of the offence beyond reasonable doubt. It is to that inquiry that the Court now turns.

49. The standard of proof in a criminal trial is proof beyond reasonable doubt, as enunciated in **Woolmington v Director of Public Prosecutions [1935] AC 485** and elaborated in **Miller v Minister of Pensions [1947] 2 All ER 372**. Where the evidence leaves a reasonable doubt as to an accused's guilt, that doubt must be resolved in the accused's favour.

50. On the question of credibility, learned counsel for the 1st Accused submitted that the testimony of PW1 was substantially uncorroborated and therefore unsafe to found a conviction for murder. That contention requires careful scrutiny of the record.

51. PW1 testified that he had worked alongside the accused persons for approximately three years. Nothing emerged in cross-examination to suggest the existence of any prior disagreement, grudge, or ill-will between him and either of the accused that would provide a motive for false implication. His evidence was that he regarded the 1st Accused and the deceased as friends. He candidly expressed surprise at the conduct he witnessed, stating

that he could not reconcile the assault with the person he believed the 1st Accused to be. That reaction was not shaken in cross-examination. The Court observes that such spontaneous bewilderment is not ordinarily associated with a contrived account; rather, it is consistent with a witness recounting events that genuinely unsettled him.

52. The Court must also consider whether his evidence stood alone. It did not as PW3, who was present at the scene throughout, independently described the same sequence of events, including the assault and the participation of the accused persons. PW3 was likewise not shown to harbour any animosity toward the accused persons. On material particulars, the accounts of PW1 and PW3 were consistent. No significant contradiction was demonstrated between them, nor was any material inconsistency exposed in cross-examination.

53. Having examined the evidence in its totality, this Court is satisfied that PW1's testimony was neither isolated nor unsupported. It was corroborated in material respects by PW3, and both witnesses withstood cross-examination. The submission that PW1's evidence was substantially uncorroborated is therefore not borne out by the evidence.

54. Counsel further submitted that there were contradictions among the prosecution witnesses regarding the lighting conditions at the bar, the weather on the night in question, the extent of the assault, and the deceased's physical condition upon leaving the Police Post.

55. This Court has considered these alleged inconsistencies carefully. Minor variations of this nature as to whether a bulb was smashed or merely went out, or whether it was raining heavily or drizzling are in my considered view the kind of peripheral differences that arise from the honest and independent recollection of witnesses who observed a fast-moving and frightening sequence of events. If anything, such variations are indicative of witnesses who do not appear to have coordinated their accounts

56. All material witnesses were consistent on the central issue that, at Small Joint Bar, the 1st Accused struck Kereri on the head, the 2nd Accused handcuffed and whipped him, and that the assault continued at the police post until the stick the 1st Accused was using broke.

57. Counsel also contended that several witnesses made more than one statement and that revisions were made. PW1 testified that his original statement had been altered

and that he brought this to the attention of the prosecutor, whereupon it was corrected. PW3 acknowledged a naming error in his first statement and corrected it. These clarifications concerned peripheral matters and did not alter the substance of either witness's evidence. They are in my considered view indicative of witnesses seeking accuracy rather than fabrication. PW2 and PW11 provided further corroboration from different vantage points. The accounts of PW1, PW2, PW3 and PW11 are, when considered holistically, credible, mutually reinforcing, and consistent on all material points.

58. The denial by the 1st Accused is directly and comprehensively contradicted by the testimony of PW1, PW2, PW3 and PW8. It does not address the post-mortem findings. It does not explain the internal injuries, the lung contusions, the brain swelling, or the haemorrhages identified by PW9. It says nothing about why an innocent man would warn PW3 the following morning to "*withdraw from the matter*." It also offers no explanation as to why the Occurrence Book entry described the injuries as having been caused by "*unknown persons*," rather than reflecting the account the 1st Accused now advances.

59. When weighed against the consistent, corroborated, and mutually reinforcing testimony of independent

eyewitnesses, the denial of the 1st Accused raises no reasonable doubt.

60. The account of the 2nd Accused is likewise contradicted. PW1, PW3 and PW8 were consistent that the 2nd Accused struck the deceased at the police post. PW2 observed him whipping Kereri at the bar. The 2nd Accused's authorship of the false Occurrence Book entry, attributing the injuries to unknown persons, is not the conduct of a mere bystander. It is the conduct of a person who understood the gravity of what had occurred and took deliberate steps to manage the official record.

61. On the question of PC Chepkwony's absence, learned counsel for Accused 1 relied on **Bukenya & Others v Uganda [1972] EA 549,** as adopted in **Dominic Mwanzia Mwendwa v Republic [2017] KEHC 3540 (KLR)** and submitted that the Court is entitled to draw an adverse inference that Chepkwony's evidence would have been unfavourable to the prosecution.

62. The evidence on record discloses that Chepkwony was bonded for multiple hearing dates but repeatedly failed to attend, deserted his duty post, and could not be traced. His absence therefore appears to have arisen from

circumstances beyond the prosecution's control rather than from any deliberate suppression of evidence.

63. More fundamentally, the principle in ***Bukenya*** applies where the evidence adduced is barely adequate and the uncalled witness is essential to establishing the truth. Neither condition obtains here. The prosecution case rests on direct, coherent, and corroborated eyewitness testimony supported by medical findings. It does not depend on Chepkwony's account.

64. Section 143 of the Evidence Act (Cap 80) provides that no particular number of witnesses is required to prove any fact. The prosecution was therefore required to call only those witnesses necessary to establish the charge beyond reasonable doubt, a burden which the Court is satisfied has been discharged.

65. On causation, learned counsel for the 1st Accused advanced three arguments: that the deceased left the police post alive; that he was removed by civilians rather than police officers; and that the intervening events including transport to the gate, delayed treatment, and transfer between hospitals were sufficient to break the chain of causation. Counsel relied on **Sawe v Republic [2003] KECA 182 (KLR)** for the proposition that where

other reasonable explanations for death exist, they must be excluded beyond reasonable doubt.

66. The Court observes, first, that ***Sawe*** concerned a conviction founded entirely on circumstantial evidence. The present case does not.

67. Second, the three alternative explanations advanced by counsel are unsupported by any evidentiary foundation. No toxicological analysis was conducted to support alcohol as a cause. PW12 confirmed that the "alcohol" notation in the hospital admission notes was taken entirely from a secondary history that was itself the product of the false narrative constructed at the police post and was not supported by any clinical finding. PW1 and PW3 confirmed that although Kereri smelled of alcohol when he was taken in, he was coherent and responsive. PW4 confirmed that no accident occurred during the motorbike journey. The defence advanced no witness and no medical evidence to establish any of the alternative explanations it proposed.

68. Counsel for Accused 1 further submitted that no medical witness testified that the injuries sustained at the police post were, of themselves, sufficient to cause death and that this gap is fatal to the prosecution case.

69. The question under Section 213 of the Penal Code is not whether the injuries were singularly or instantaneously lethal, but whether the original unlawful act remained an operative and substantial cause of death at the time it occurred. This principle is reflected in **R v Smith [1959] 2 QB 35** and **R v Cheshire [1991] 1 WLR 844**, and has also been applied persuasively in **Uganda v Nyingaling (Criminal Sessions Case No. 0101 of 2015) [2018] UGHCCRD 121**.

70. PW12 confirmed that a CT scan revealed acute brain oedema attributable to blunt force trauma and that Kereri's condition was traumatic in origin. The pathologist concluded that the cause of death was asphyxia arising from lung contusions and acute lung injury due to blunt force trauma. These findings correspond with anatomical precision to the eyewitness accounts of the manner in which Kereri was assaulted. An accused person is not relieved of criminal responsibility merely because death does not follow instantaneously or because delays in treatment contribute to the outcome. As stated in ***R v Smith*** (supra), even thoroughly negligent medical treatment does not break the chain of causation where the original injury remains an operating and substantial cause of death. Section 215(1) of the Penal Code further confirms

that no temporal bar arises, as the death occurred well within a year and a day of the assault.

71. On malice aforethought, learned counsel for Accused 1 relies on **Nzuki v Republic [1993] KLR 171** and submits that malice cannot be inferred merely from the fact of an assault, and that neither a wooden stick nor a rubber whip is a conventionally lethal weapon. The Court accepts the proposition that malice aforethought must be proved, not presumed. But the Court does not accept that the facts of this case fail to establish it.

72. Section 206 of the Penal Code does not require premeditation in the colloquial sense. It requires proof of an intention to cause death or grievous harm, or knowledge that the act would probably cause death or grievous harm. In **Hyam v DPP [1974] AC 55**, malice aforethought was established where the accused knew it was highly probable that the act would result in death or serious bodily harm. In **Ernest Asami Bwire Abanga alias Onyango v R (CACRA No. 32 of 1990),** the Court stated that the question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or to do grievous harm upon the deceased.

73. In **Bonaya Tutu Ipu & another v Republic [2015] KECA 335 (KLR)**, following **Chesakit Matayo v Uganda (Criminal Appeal No. 95 of 2004) [2009] UGCA 21 (20 May 2009)**, the Court of Appeal emphasised that the relevant considerations include the part of the body targeted, the type and manner of use of the weapon, the severity of the injuries, and the subsequent conduct of the accused. **Rex v Tuper S/O Ocher [1945] 12 EACA 63** confirms that the decisive question is not the label attached to the instrument, but what was done with it, and to whom.

74. Applying these principles, I find that the 1st Accused, an experienced Corporal of Police entrusted by law with the protection of detainees in his custody, struck Kereri on the head with a wooden stick and continued to beat him until the stick broke. He did this at Small Joint Bar and inside a police post, in the night, to a person entirely under his control and with no capacity to defend himself. He then arranged for Kereri to be transported to a relative's home rather than to a medical facility. He telephoned the family and described the dying young man as merely "cold." He warned a witness to withdraw from the matter. All of this is conduct consistent with the knowledge that grievous harm

had been inflicted and a desire to prevent that knowledge from being acted upon.

75. On the other hand, the 2nd Accused handcuffed Kereri who had already received blows to the head, directing his strikes to the back and torso. He then authored a false Occurrence Book entry attributing Kereri's injuries to persons unknown. The act of falsification is not the conduct of an innocent man. It is the conduct of a man who knew that what had occurred was unlawful, who knew the probable consequences, and who took deliberate steps to obscure the truth. The law does not excuse participation in unlawful violence on the ground that it was undertaken at the direction of another, particularly where the victim is defenceless and in custody.

76. The Court accordingly finds that the mental element required by Section 206 of the Penal Code, that the accused persons either intended to cause grievous harm or knew that grievous harm was the probable consequence of their conduct, has been established beyond reasonable doubt in respect of both accused.

77. Having carefully evaluated the entirety of the evidence on record, the submissions of counsel, and the applicable law, the Court is satisfied that the material facts

emerging from the evidence are clear and largely uncontested in their essential particulars.

78. From the consistent testimony of the eyewitnesses, the medical evidence, and the surrounding circumstances, the Court makes the following findings of fact:

1) **On the evening of 19th August 2019, the 1st Accused struck Kereri on the head with a wooden stick at the veranda of Small Joint Bar in Nyamatoki.**

2) **The 1st Accused thereafter smashed the electric bulb on the veranda, plunging the scene into darkness.**

3) **The 2nd Accused handcuffed Kereri and whipped him with an electricity cable or rubber whip**

4) **Kereri was marched to Nyamatoki Police Post in handcuffs, under the control of the accused persons.**

5) **At the police post, the 1st Accused struck Kereri repeatedly with the wooden stick until the stick broke.**

6) **The 2nd Accused thereafter struck Kereri on the back and buttocks with a stick or rubber implement**

7) **On the morning of 20thAugust 2019, the 1st Accused warned PW3 to withdraw from the matter and described the deceased's condition as merely "fainting."**

8) **The 1st Accused arranged for Kereri to be transported to a relative's home rather than to a medical facility, and described his condition to the family merely as being "cold."**

9) **The 2nd Accused made a false entry in the Occurrence Book at Nyamatoki Police Post on 20th August 2019, attributing Kereri's injuries to assault by unknown persons.**

10) **The cause of death was asphyxia arising from lung contusions and acute lung injury caused by blunt force trauma, consistent with the assault described by the eyewitnesses.**

11) **The assault inflicted upon Kereri on 19th August 2019 at Small Joint Bar and later at Nyamatoki Police Post by the accused persons was the direct, operative and substantial cause of his death on 28th August 2019,**

12) **There is no evidence of any intervening act or event after the assault that was capable of**

**breaking the chain of causation between the unlawful acts of the accused persons and the death of Kereri.**

79. Flowing from the foregoing findings of fact, and upon application of Sections 206 and 213 of the Penal Code, the Court is satisfied that the injuries inflicted upon the deceased by the accused persons constituted the direct and substantial cause of death, and that in inflicting those injuries the accused persons acted with malice aforethought.

80. The defences advanced by the accused persons, consisting of a bare denial by the 1st Accused and a partial acknowledgment coupled with deflection by the 2nd Accused, do not raise any reasonable doubt and are therefore rejected.

81. Accordingly:

1) **The 1st Accused, JAMES OGWAGWA NYAKINA, is hereby found GUILTY of the offence of murder of Amos Kemosi Kereri contrary to Section 203 as read with Section 204 of the Penal Code.**

2) **The 2nd Accused, JACKSON KIRUI KIPNGENO, is likewise found GUILTY of the offence of murder of Amos Kemosi Kereri contrary to Section 203 as read with Section 204 of the Penal Code.**

**DELIVERED AT NYAMIRA THIS 19th DAY OF March 2026**

**WAMAE.T. W. CHERERE**
**JUDGE**

**Appearances**

**Court Assistant - Anita**

**1st Accused - Present**

**2nd Accused - Present**

**For 1st Accused - Mr. Maeche for Maeche & Co. Advocates**

**For the DPP - Mr. Chirchir (SADPP)**