

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. E005 OF 2022

REPUBLIC.....

.....PROSECUTOR

VERSUS

COLLINS MUTUMA MURIIRA.....

.....ACCUSED

JUDGEMENT

- 1.** The Accused is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 28th August 2022, at Mathagiyo Village, Katheri Location, Buuri Sub-County within Meru County, the Accused murdered Angelica Kanorio.
- 2.** The accused entered a plea of not guilty on 28th September 2022 and the matter then proceeded for hearing, with the prosecution calling nine witnesses in support of its case.
- 3. PW1** was **Felix Mugambi Kibori**, the area chief, who testified that the Accused was living in the same compound

as the deceased in a property owned by the deceased's younger sister. Further, that on multiple occasions, the deceased had reported to PW1 about the Accused's misconduct of stealing foodstuffs and other items from her house. PW1 also testified that the Accused was well known for his drug use. He stated that on 27th August 2022, the area manager informed him that the deceased was missing as she had not showed up in Meru for division of their ancestral land. On 28th August 2022, he received information that the deceased's body had been found inside the Accused's house wrapped in a blanket. He then rushed to the scene and upon interrogating the Accused, he stated that he did not know what happened to the deceased but he had wrapped her in a blanket and later swept the earthen floor and sprinkled it with water.

4. The witness then called police officers from Katheri who arrived at the scene, processed it and arrested the Accused. He was convinced, based on the history reported to him by the deceased, that the Accused killed the deceased. This

belief was strengthened by the fact that the Accused had tampered with the evidence by sweeping his floor.

5. **PW2** was the Accused's mother, **Doreen Karambu**, who gave a history of unusual behaviour by the Accused that led her to take him to Mathari Hospital in 2017. That the Accused was admitted under medication for two weeks after which he was discharged and went back home with his medication. She further stated that he ran away from home and she learnt that he had gone to stay with the deceased although he still carried on with his problematic behaviour and, that she consistently followed up on the Accused's medication. It was her testimony that on 28th August 2022, she was informed by one David Mwongera that the Accused had done a bad thing as the deceased, who had been missing for two days was found dead in the Accused's house.

6. **PW3** was the deceased's younger brother, **David Mwongera**. He testified that the deceased, the Accused and himself used to live in the same compound but in different houses. Further, that the deceased had complained severally

that the Accused was stealing her foodstuff from her house which had been reported to the area chief (PW1). He stated that the Accused was also well known as a bhang user and 26th August 2022 was the last time he saw the deceased at around 1100 Hours before he left to run his errands. On the said date, he came back late and went directly to sleep. On 27th August 2022, he left his house early and went to look for transport to Maua from a friend since they were to travel to Meru as siblings for sub-division of their ancestral land . To the best of his knowledge, there were no disagreements between the siblings on the said division. On this date, he did not check for the deceased as he had assumed they would meet in Meru town.

7. He testified that their sister Nkatha had promised to pick the deceased up on their way to Meru on 26th August 2022 and that they would sleep in town. As a result, he did not check on her the morning of 27th August 2022 as they believed she had already left the previous day. When he got to Meru town, he met his sister Nkatha who had promised to pick the deceased, and she informed him that she had passed by the

deceased's house the previous day and did not find her. They came back to Mathagiroti at around 7:30 PM and the area chief briefed him about the unsuccessful search efforts. He testified that on 28th August, 2022, the Accused called him and told him that the deceased was dead and that her body was in his house. When he entered the Accused's house, he saw the deceased wrapped in a blanket and some clothes. He then rushed to Katheri Police post to report the matter where officers responded swiftly. When the body was uncovered, he noticed that she had blood stains on the left side of her neck.

8. According to him, only the Accused had reason to kill the deceased based on his previous behaviour of stealing from her on multiple occasions.
9. **PW4** was **Dr. John Muthuri**, the pathologist who performed the autopsy on 2nd September 2022, and observed injuries on the deceased. He noticed multiple injuries on the body including a haematoma, bleeding below the skull and the brain had increased intracranial pressure. He concluded that the deceased died of head injury due to blunt force trauma.

He produced the Post-Mortem Form as Exhibit 3. Further, he stated that the body had moderate decomposition at the time of the post mortem

10. PW5 was **Charity Karoki**, the deceased's sister who helped identify the body of the deceased to PW4 during post-mortem.

11. PW6 was **Dr. Ruth Gathuru**, a specialist psychiatrist who testified on 6th May 2025. She had assessed the Accused on 23rd March 2022, five months before the incident. She had diagnosed him with Drug Induced Psychosis and in her report which she produced as Exhibit 2, she noted that medication could assist, and the same had been started. She gave her professional opinion that the Accused's mental condition then was reversible with medication and it was expected that during the duration of his medication, he was projected to make a full recovery.

12. PW7 was **Crispin Nguru**, a Government Chemist Analyst. He had been tasked, through an Exhibit Memo dated 8th

September 2022, to analyze items recovered from the Accused such as Blue Jeans Trouser and also a white jacket belonging to the Accused. She noted that the trouser had blood stains which matched those ones on the jacket.

13. PW8 was the Investigating Officer, **IP Kelly Waweru**. He told the Court that following a report of the deceased's body being recovered in the Accused's house, he joined his colleagues and went to the scene. They found the body wrapped with blanket and tattered clothes and the body had a cut on the lower side of the left leg and blood was oozing from the nostrils and ears. He testified that the earthen floor had been swept and water sprinkled. He collected the blue jeans and a white jacket that belonged to the Accused that had blood stains which he produced as Exhibits 5 and 6 respectively. He then recorded the statements from all relevant witnesses and also obtained a copy of the Accused's mental assessment report from the Accused's mother (PW2) which was produced as an exhibit by PW 6. Additionally, he took the Accused to hospital for mental assessment and also

forwarded the exhibits recovered to the Government Chemist for analysis.

14. The witness produced the witness statement of Cpl Simon Gitonga, now deceased, who was part of the officers who arrested the Accused on 28th August 2022. He produced the statement and Police signal regarding the witness' death as Exhibits 9(a) and 9 (b) respectively.

15. PW9 was a **Dr. Andrea Mwikamba**, a Psychiatrist, who testified that he examined the Accused on 6th September 2022 and observed that the Accused had no illness. That he found the Accused's memory and mood to be normal and in his assessment, he noted no delusions and that there were no family members with mental illness history. During cross examination, she stated that she found the accused person fit to plead and additionally, that he was fit to stand trial.

16. The court found that the accused had a case to answer vide the ruling dated 16th October 2025 and he was placed on his defence.

17. Counsel for the Accused indicated to the court that the accused opted to remain silent and offer no evidence. Additionally, that they would not be filing submissions. The prosecution were granted 14 days to file submissions but at the time of writing this decision there were none on record.

Analysis & Determination

18. The sole issue for determination is; **Whether the accused person is guilty of the offence of murder.**

19. Section 203 of the Penal Code defines murder as follows;

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

20. Section 206 of the Penal Code enunciates the essential elements of malice aforethought as follows;

- 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;**

21. To secure a conviction, the Prosecution, has the duty to prove, beyond reasonable doubt, that the accused, by an unlawful act or omission, caused the death of the deceased through “malice aforethought”.

22. For the Court to make a finding that an accused person committed the offence of murder, the Prosecution must therefore establish the following elements;

(a) death of the deceased,

(b) proof that the accused person committed the unlawful act which resulted in the death of the deceased: and,

(c) malice aforethought.

23. In this case, the death of the deceased and cause thereof are not disputed. According to the testimony of the Pathologist, PW4, Dr. John Muthuri, who conducted an autopsy on the body of the deceased, the cause of death was **“head injury due to blunt force trauma”**.

24. As aforesaid, the burden lay on the prosecution to prove the charge beyond any reasonable doubt. The term **“beyond reasonable doubt”** was described and/or explained in the leading case of **Woolmington v Republic 1935 AC 462**, as follows:

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

- 25.** On whether there is proof that the accused is the person who committed the unlawful act which resulted in the death of the deceased, it is not in dispute that there was no witness who claimed to have seen the accused inflict the injuries that

resulted in the death of the deceased. The evidence can therefore be described as “circumstantial”.

26. As to what constitutes “circumstantial evidence” and in what manner it can sustain a conviction, the Court of Appeal, in the case of **Ahamad Abolfathi Mohammed & 2 others v Republic (2018) eKLR**, stated the following:

“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.”

27. As to the manner in which “circumstantial evidence” ought to be established such that it can sustain a conviction, the Court of Appeal, in the case of **Abanga alias Onyango v Republic Criminal Appeal No. 32 of 1990**, guided 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 Accused;

(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."

28. The Court of Appeal, again, in the case of ***Joan Chebichii Sawe v Republic [2003] eKLR***, the Court observed that:

"..... In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any

other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”

- 29.** Therefore, it is generally agreed that for “circumstantial evidence” to carry the day, the Prosecution must establish that there are no other co-existing circumstances which could weaken or destroy the inference of guilt. It is also agreed that in a case reliant on “circumstantial evidence”, each link in the chain must be closely and separately examined to determine its strength before the whole chain can be put together and a conclusion drawn that the chain of evidence as proved is incapable of explanation on any other reasonable hypothesis except the hypothesis that the accused is guilty of the charge **(see Mwangi & Another V Republic (2004) 2 KLR 32).**

30. In this case, PW1, the Assistant Chief, narrated the ongoing disputes that had been between the accused and the deceased, his grandmother, due to his constant stealing of foodstuffs and other items from her house. This conflict was corroborated by PW3 who also lived in the same compound with the deceased and the accused. Additionally, the deceased was found dead in the accused's house and it was evident that he had attempted to clean up the house, the crime scene, which was suspicious in the circumstances. This is compounded by the fact that according to the pathologist, the body had signs of decomposition, indicating that the body had been in his house for more than a day before it was discovered. His actions are not reflective of an innocent person who has come across a dead body in his house, and they lead this court to an inference of his guilt.

31. The testimonies demonstrate that the witnesses found the deceased at the home of the accused, dead and wrapped in a blanket and with injuries and blood-stained clothes. There is nothing to suggest the possibility that anyone else could have

entered the house before the accused, or even prior to the incident, or that the deceased could have been injured elsewhere. In fact, he is the one who disclosed the death to PW3 and could not explain the circumstances underlying the same, or why he chose to clean the floor or wrap the body in blanket.

32. The evidence by the prosecution is not controverted by any other evidence as the Accused, as is his right, opted to offer no evidence. It is a cardinal principle of criminal law that the burden of proof rests throughout upon the prosecution and never shifts to the accused person, save in a few statutory exceptions. An accused person bears no obligation to prove his innocence or to explain away the allegations levelled against him. The standard required of the prosecution is proof beyond reasonable doubt. However, once the prosecution has adduced credible, cogent and consistent evidence establishing all the essential ingredients of the offence, and the same evidence remains uncontroverted or unshaken in cross-examination, the court is entitled to find that the prosecution has discharged its legal burden. In such

circumstances, the failure to offer rebuttal evidence or the mere denial by the accused, unsupported by any evidence capable of raising a reasonable doubt, does not weaken the prosecution case. The law does not require proof beyond all shadow of doubt, but only beyond reasonable doubt, and where the evidence tendered meets that threshold, a conviction may properly follow notwithstanding the accused's election to remain silent or offer no plausible rebuttal.

33. Having carefully considered the accounts given by the Prosecution witnesses, I am satisfied that it is the accused person who inflicted the injuries on the deceased, which injuries led to the death of the deceased. Notably, the accused chose not to adduce any evidence or give any testimony in his defence. The circumstantial evidence leads to an unbreakable link between the accused and the death of the deceased.

34. The Prosecution having proved the actus reus, the next issue is whether "malice aforethought" can be inferred from the actions of the accused person. This is because the offence of

“murder” is only complete when “malice aforethought” is established if, as prescribed in Section 206 of the Penal Code, the evidence proves any one or more of the following circumstances:

(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.”

35. In the case of **Hyam v DPP {1974} A.C.** the Court held inter alia that:

“Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another the accused knew that it was highly probable that, that act would result in death or serious bodily harm.”

36. The Court of Appeal, on its part, in the case of **Bonaya Tutu Ipu & Another v Republic [2015] eKLR**, stated as follows:

“..... In the persuasive decision of Chesakit v Uganda, CR App No 95 of 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been

proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person.”

37. In this case, it is clear from the evidence tendered, that the deceased died from injuries inflicted on her by the use of a blunt object. Although no forensic tests were conducted to link the death of the deceased to the accused, the testimony given by PW4 confirms that the injuries that led to the death of the deceased were due to “blunt trauma”. The nature of the injuries therefore suggests that the attack was vicious, brutal and intended to cause maximum grievous harm to the deceased. To my mind, these facts easily establish the presence of ‘malice aforethought’.

38. Other than the injuries inflicted on the deceased, PW1-3 who knew the Accused and the deceased testified of a history of the Accused’s strained relationship with the deceased on account of the Accused’s stealing. In the **Bonaya Tutu Ipu**

case (Supra), the subsequent conduct of an Accused person after the murder is also indicative of their malice. The fact that the Accused's earthen floor had been swept and water sprinkled, is, I reiterate, suggestive of efforts aimed at covering up the murder or to distort evidence. This conduct by itself depicts a presence of mind to not only murder the deceased, but to also elaborately cover up the murder hence malice aforethought is evident..

39. I therefore find that, apart from the accused person being the one who committed the act that resulted in the death of the deceased, there was also "malice aforethought" in his actions.

40. Under the above circumstances, my finding is that the Prosecution has through the facts and evidence presented, proved the charge of murder against the accused person beyond any reasonable doubt. I hereby convict the Accused person of the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

**Dated signed and delivered virtually this 14th day of May
2026**

A.K .NDUNG’U

JUDGE