Nyali v Republic (Criminal Appeal E054 of 2023)
[2025] KECA 798 (KLR) (9 May 2025) (Judgment)

Neutral citation: [2025] KECA 798 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CRIMINAL APPEAL E054 OF 2023

KI LAIBUTA, FA OCHIENG & GWN MACHARIA, JJA

MAY 9, 2025

BETWEEN

BONIFACE MWAKIO NYALI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Voi (Onyiego, J.) delivered on the 21st day of July, 2021inHC.CR.C. No. 8 of 2017)

JUDGMENT

1. Boniface Mwakio Nyali, the appellant, was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code* before the High Court of Kenya at Voi. The particulars in the information were that, on 27th November 2018 at Mwanga Village in Ronge sub- location within Taita Taveta County, the appellant unlawfully assaulted Mwangesha Mwamburi (the deceased) resulting in his death.

2. The prosecution called a total of nine (9) witnesses in support of its case. The prosecution's witnesses recounted the events as follows: PW1, Patrick Maghanga, a farmer who hailed from the same village as the deceased testified that, on 27th

   November 2018, he left his home for the appellant's home; that, on arrival, he found the appellant standing outside his house with another villager by the name of Mshimba; that they were engaged in a conversation in respect of the deceased; that the appellant was explaining to Mshimba that his deceased father approached him in his room the previous night with the intention of making love to him; that agitated by the alleged move, the appellant fought the deceased and twisted his neck; that he did not see the deceased, but the appellant told them that his deceased father was in the house and was suffering from injuries; that he would die within 7 days; and that Mshimba left for his home, but that PW1 and

the appellant proceeded to harvest coconut juice from the appellant's farm after which they parted ways at 6.00 p.m.

3. The following day, PW1 received a call from one Mr. Mwandisha stating that the deceased had been found in his house dead; that he then proceeded to the appellant's home and found many people including the police; that he knew the appellant in the year 2018; that the appellant was not ordinarily staying in the village, but was living in the same house with the deceased; that the appellant was born outside the village and he came looking for his father; and that the appellant was physically stronger than the deceased.

4. In cross-examination, PW1 stated that he did not report the attack, and neither did he tell anyone that the deceased had been attacked; that he only got to know of the deceased's death the following day; that he could not tell the nature of the relationship between the deceased and the appellant; and that, as he and the appellant were talking outside the house, the house was locked with a padlock.

5. PW2, Nancy Maura Mwakio, the chairperson of Nyumba Kumi in Mwanga village, recalled that, on 28th November 2018, the appellant came to her shop at 6.00 p.m.; that she enquired from him why he had come home early from Voi where he repairs motor bikes; that the appellant told her that the deceased had tried to rape him the previous night and, as a result, he beat him and pushed him against the wall; and that he left his father in the house sleeping. PW2 then called one Beatrice Nguvu, PW3, to go and see what the appellant was talking about, but that they went the following day.

6. On 28th November 2018, the deceased's relatives comprising PW3, Peris Maganga (PW4), Zangali Malombe (PW5) and Zangali Malombe (PW6), went to the deceased's home, but they found the house locked; and that they pushed the door until they gained access. According to PW3, the appellant found them at the scene and told them that his father had died; that PW3 then called PW2 and both reported that they found the deceased lying on his bed dead; and that PW2 called Granton Mbura, a village elder, the area chief and the assistant chief, who in turn called Mwatate Police Station. According to PW2, the deceased was an old man; and that, she had never heard of any differences between the appellant and the deceased.

7. In cross-examination, PW2 stated that the house where the deceased was found dead belonged to the deceased; that the appellant and the deceased had been living together in the house for about 6 months; that the appellant had separated from his wife; that the deceased did not have a wife nor other children; that PW3 further described the appellant as a troublesome person who had problems with his wife, and that he once swore that he could kill his wife.

8. PW4, PW5 and PW6 received news from PW3 that the appellant had differences with his father; and that they travelled to the deceased's home on 28th November 2018 where they discovered that the deceased had died. It was their testimonies that the appellant admitted to killing his father.

9. PW7, No. 235243 of DCI Crime Investigation in Voi, did not provide his name. He testified that on 23rd November 2018, while in the company of one Masaru, the Deputy OCS Mwatate sub-County, they proceeded to the scene of crime; that he took five photographs all showing the different positions the deceased's body was found on, and the injuries he had suffered; and that there was an injury on the left-hand armpit. He produced the photographs as exhibits.

10. PW8, PC Apolo Njenga of DCI Mwatate testified that, on 29th November 2018, he was sent by the DCIO to the scene of murder while accompanied by other officers; that, at the scene, they found the deceased's body inside a mattress; that the deceased had injuries on the left hand, neck and back; that it was reported to him that the appellant had killed his father on allegations that the deceased had tried

to sodomise him; and that they arrested the appellant. In cross - examination, PW8 stated that they did not recover any weapon that may have been used to assault the deceased.

11. PW9, Dr. Joynar Weni, of Moi Voi Referral Hospital, produced the post mortem report on behalf of Dr. Njumwa, who conducted the post mortem on 3rd December 2018; that the general observation on the body was that the deceased was likely to have died 5 days before the post mortem was conducted; and that the body had multiple stab wounds on the face, right mandibular around the chin, multiple rib fractures on both sides and bruises on the elbow region. The internal injuries were: multiple rib fractures on both sides, perforated left and right lung tissues and haemothorax of about one litre. The head also had multiple skull fracture and intracorneal bleeding, which was epidural haematoma right beneath the skull bone. The conclusion thereof was that the cause of death was severe head and chest injuries secondary to blunt force trauma.

12. After close of the prosecution case, the learned Judge ruled that the appellant had a case to answer and was accordingly put on his defence. He gave a sworn statement of defence in which he admitted that the deceased was his father. He however denied confessing to killing him. He stated that he went to PW2 and Mwamburi to inform them that his father had a throat problem; that he then rushed to call his uncle one Marura Mwangala; that together they went to the house where they found that the deceased was not talking; that it was at night; and that when they sought the services of a doctor known as *'Mkisii'* they were told that he was not around.

13. The appellant went on to state that he then called PW3's husband, Jonathan Nguvu who accompanied him to his home; that they found the deceased still groaning in pain; that he administered some painkillers to the deceased, but that he was not able to swallow them; that the deceased started vomiting and they screamed for help; that the deceased then died; and that he did not see any injuries on the deceased.

14. In cross-examination, the appellant stated that the house he was living in with his father had 4 rooms; that on 27th November 2018, he was with the deceased although the deceased had earlier left for the farm; that he informed PW2 at her shop that the deceased was ill; and that the deceased fell from the bed twice and choked himself. He denied having knowledge of the origin of the injuries on the deceased's body.

15. After considering the evidence on record and the respective submissions, the learned Judge held that the undisputed evidence before the trial court was that the deceased died on 27th November 2019; that the extent of the injuries suffered by the deceased were inconsistent with those occasioned by a fall as claimed by the appellant; that stab wounds and fractures could not have been self-inflicted; and that the injuries suffered by the deceased were occasioned by somebody through an unlawful act which was grievous bodily harm.

16. In finding that the appellant was the one who committed the unlawful act which led to the death of the deceased, the learned Judge held that the deceased and the appellant were staying in the same house; that there was no one else who would have gained access into the house and cause the injuries on the deceased without the appellant's knowledge and attention; that there were no signs of forced entry into the house; that the appellant's disclosure to his friend, one Mshimba and PW2 that he had fought with the deceased, coupled with the nature of injuries sustained by the deceased, all called for the reasonable inference that the only person who had the opportunity to attack the deceased was the appellant himself; and that the unbroken chain of events irresistibly pointed a blameworthy finger towards the appellant.

17. It was the learned Judge's view that, based on the nature of the injuries which were multiple in nature, the parts of the body that were targeted, being the chest, head and neck, all of which are delicate, the weapon used that caused stab wounds and fractures, led to the conclusion that the intention was either to cause grievous bodily harm or kill the deceased; and that, therefore, malice aforethought was established.

18. The learned Judge rejected the appellant's defence as a mere denial and found that the prosecution had proved the offence charged beyond reasonable doubt. The appellant was convicted accordingly and sentenced to serve 20 years imprisonment.

19. Aggrieved by the Judgment of the trial court, the appellant has filed this appeal in which he has raised two grounds, namely:

> " a. That the learned Judge erred in law and fact by failing to evaluate the evidence as a whole and observe that the prosecution never proved their case beyond reasonable doubt; and
>
> b. That the learned Judge erred in law in relying entirely on circumstantial evidence and hearsay evidence to convict the appellant without plausible reliable supporting evidence."

20. We heard this appeal on 25th November 2024. Learned counsel Mr. Mirembe appeared for the appellant while learned State Counsel Miss. Nyawinda appeared for the respondent. Both counsel relied on their respective written submissions which they highlighted. Those of the appellant are dated 23rd October 2024 while those of the respondent are dated 8th November 2024.

21. Mr. Mirembe submitted that the evidence presented by the prosecution was purely circumstantial since there were no eyewitnesses; that, in relying on circumstantial evidence, the court must consider whether the prosecution had excluded other possible explanations, or whether the cumulative effect of the evidence points to the accused being guilty beyond reasonable doubt; that there was no witness who testified as to the whereabouts of the deceased at the time he may have sustained the fatal injuries; and that it could be that the deceased sustained the injuries elsewhere other than in the house. Counsel relied on the decisions of this Court in Marita v Republic [2023] KECA 580 (KLR) and PON v Republic [2019] KECA 650 (KLR) in highlighting the principle of the last seen with doctrine; that there was no conclusive evidence that the appellant was the last person to be seen with the deceased prior to the deceased being found with the fatal injuries; that all the witnesses' testimonies pointed to the fact that they either heard from, or were told by, third parties of the deceased's fate; that the evidence pointed to the fact that the deceased could have met his injuries in the hands of another person other than the appellant; and that, such circumstances weakens the inculpatory inference and creates reasonable doubt that the appellant committed the offence.

22. Counsel submitted that there were no known reports of assault, mischief, mental or physiological mistreatments from the appellant to the authorities, nor did the neighbours testify to ever hearing calls of distress from the deceased's household; that the deceased could have sustained the injuries the previous day; and that, PW9, the doctor, testified that the injuries appeared to have been caused by a fall from a height and not necessarily from an assault.

23. Counsel contended that both actus reus and mens rea which are key ingredients of the offence of murder were not established beyond reasonable doubt as was held by this Court in Joseph Kimani Njau v Republic [2014] eKLR.

24. Counsel further submitted that malice aforethought as defined under section 206 of the *Penal Code* was not proved, more so because no witness testified that there existed 'bad blood' between the appellant and the deceased; and that any actions by the appellant caused the deceased's death. This Court's case of Nzuki v Republic (1993 KLR

    171) was cited for the proposition that malice aforethought must be proved for an offence of murder to stand.

25. We were urged to be persuaded by the decisions of the High Court of Malaya in Criminal Appeal No. 41LB-202- 08/2013- Public Prosecution v Zainal Abidin B. Maidin & Another and JOO v Republic [2015] eKLR in which the courts placed emphasis on the duty of the prosecution to prove the charge against an accused person beyond reasonable doubt. To the appellant, the prosecution did not discharge this burden and, accordingly, we were asked to allow the appeal.

26. On her part, Miss. Nyawinda submitted that the prosecution discharged its burden of proof, and indeed proved that the appellant killed the deceased. Counsel conceded that the evidence adduced in proof of the charge was circumstantial for want of an eyewitness; that the circumstantial evidence was cogent and led to only one inference that the appellant was the one who caused the deceased's death. We were referred to the decision of this Court in Odhiambo v Republic [2024] KECA 571 (KLR) where the evidence presented was that the appellant therein, Odhiambo, was the last person to have interacted with the deceased when he sent the deceased to buy porridge, and the court found him culpable of the deceased's death. The Court held that circumstantial evidence, just like direct evidence, may properly lead to a conviction as long as the threshold of proof is met.

27. Miss. Nyawinda submitted that the evidence on record was that the deceased and the appellant were father and son respectively, and lived in the same house; that the evidence of PW1 was that the appellant had reported that he had assaulted the deceased on the night of 27th November 2018; that the appellant went back to his home; that it was not until 29th November 2018 that the deceased was discovered dead; that the appellant admitted in his evidence that he was the last person to interact with the deceased; and that he failed to explain how the deceased sustained the grievous injuries.

28. Referring again to the decision of Odhiambo v Republic (supra), Miss. Nyawinda submitted that malice aforethought does not necessarily denote motive; that the former may be inferred from the circumstances of the case; that, from the evidence of PW9, the injuries inflicted on the deceased were severe and intended to intentionally and fatally wound him; and that, even though the real motive for killing the deceased is only known to the appellant, the trial court rightfully concluded that the appellant killed the deceased with malice aforethought.

29. In conclusion, we were urged to find that the trial court correctly found that the appellant's defence did not dislodge the prosecution's case, and that we should accordingly uphold both the conviction and sentence and dismiss the appeal in its entirety.

30. As the first appellate court, we have accordingly re-evaluated and re-analysed the evidence on record as obligated. We are required, upon re-evaluation of the evidence to come up with our independent conclusion. In so doing, we should bear in mind that we did not have the advantage of either seeing or hearing the witnesses testify for which we should give due allowance. This mandate was explained in Okeno v Republic [1972] E.A. 32 as follows:

> " The first appellate court must itself weigh conflicting evidence and draw its own conclusion (Shantitlal M Ruwala v R, [1957] EA 57). It is not the function of a first appellate court merely to scrutinise the evidence to see if there was some evidence to support the lower

courts' findings and conclusions; it must make its own findings and draw its own conclusion only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witness."

31. The appellant's grounds of appeal challenge the conviction only. We need not re-invent the wheel on the elements the prosecution had to prove in a charge of murder. The prosecution had to prove the following three elements in order to secure a conviction, namely that the death of the deceased occurred and its cause; that the death was caused by an unlawful act of commission or omission on the part of the appellant; and that the appellant was motivated by malice aforethought in committing the said act. This was the finding by this Court in Abdi Kinyua Ngeera v Republic [2014] KECA 654 (KLR) which stated:

> " For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought."

32. There is no contestation as to the fact of the death of the deceased and the cause of the death. PW2 to PW6 had the opportunity of going to the deceased's house after learning of his death and saw his body lying on the bed with injuries. PW7, the scene of crime officer, took photographs of the body at the scene while PW8, the investigating officer, visited the scene and found it in situ. Indeed, the appellant too told these witnesses that the deceased was in the house dead.

33. As to the cause of the deceased's death, a post mortem report was produced as an exhibit by PW9. It was indicated that the body had multiple stab wounds on the face, right mandibular around the chin, multiple rib fractures noted on both sides and bruises on the elbow region. The internal injuries were: multiple rib fractures on both sides, perforated left and right lung tissues and haemothorax of about one litre. The head also had multiple skull fracture and intracorneal bleeding, which was epidural haematoma right beneath the skull bone.

    The conclusion thereof was that the cause of death was severe head and chest injuries secondary to blunt force trauma.

34. What is in dispute is whether it is the appellant who caused the death of the deceased. As conceded by both the appellant and the respondent, the appellant's conviction was based purely on circumstantial evidence, circumstantial in the sense that no one saw the appellant killing the deceased. Notably, it is the appellant who first broke the news of the indisposition of the deceased after he allegedly told PW1 and PW2 that he had assaulted the deceased because he had attempted to sodomise him.

35. The appellant has strongly submitted that the elements of actus reus (act of killing) and mens rea (mind or intention to kill) were not established by the prosecution so as to lead to the conclusion that he was responsible for the deceased's death. The appellant further urged that the circumstantial evidence relied on was not sufficient to sustain a conviction.

36. This Court in Ahamad Abolfathi Mohammed & Sayed Mansour Mousavi v Republic [2018] KECA 743 (KLR) in stating the circumstances under which circumstantial evidence can be relied upon to warrant a conviction cited with approval this Court in the unreported case of Abanga alias Onyango v Republic Cr. App No. 32 of 1990 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 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 no one else."

1. In Sawe v Republic [2003] KECA 182 (KLR), it was held:

> " 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 upon. 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 remain with the prosecution. It is a burden which never shift to the party accused."

38. The post mortem report produced by PW9 concluded that the injuries suffered by the deceased were consistent with stab wounds and blunt force trauma. In his defence in chief, the appellant stated that the deceased died in the house due to a throat issue; and that, even after administering painkillers, he nevertheless succumbed. We note that the appellant named one uncle Marura Mwangala as one of the persons who accompanied him to the house to try and save the deceased. Interestingly, the appellant did not call this Marura as his witness.

39. In cross examination, he stated that the deceased had fallen from the bed which reflected the injuries suffered. This important fact was conveniently omitted by the appellant in his testimony in chief. The question then is; if the deceased died in the house because of a throat complication, why did the appellant not find it fit and proper to call the police and/or take him to a nearby medical facility? From the post mortem report, the injuries suffered by the deceased are inconsistent with the possibility that the deceased died because of a throat infection or a fall from his bed.

40. The evidence of PW1 and PW2 was that the appellant alleged that the deceased tried to sexually assault him and, as a consequence, he beat him up. We note that PW1 and PW2 were not at the same place when the appellant told them that he had differences with his father since he tried to sodomise him. The fact that the appellant mentioned to both PW1 and PW2 that he had an altercation which his father points to the fact that he needed to purge his guilt. We say so because he is the first person who raised the alarm that the deceased was unwell because he beat him up. This led to the PW1 to PW6 finally going to the scene. Without belabouring much, this evidence ultimately means that the only person who knew that the deceased was unwell was the appellant.

41. As it were, when PW3 to PW6 finally forced their way into the house, they found the deceased already dead. The fact that they found the deceased's house locked from outside is quite telling. It is also telling that the appellant did not attempt to state in his defence, as he had allegedly told PW1 and PW2, that he had assaulted the deceased because he had tried to sodomise him. And as fate would have it, PW3 to PW8 witnessed multiple injuries on the body of the deceased, which injuries were so serious that they were inconsistent with a person who could have been trying to defend himself, if the appellant's

theory was anything to go by. Being the last person who was with the deceased leaves no doubt in our minds that the appellant was responsible for the death of the deceased.

42. In Kimani v Republic (Criminal Appeal 41 of 2022) [2023] KECA 1390 (KLR), this Court held that:

> " The doctrine of 'last seen alive' is based on circumstantial evidence where the law prescribes that the person last seen with the deceased before their death was responsible for his or her death and the accused is expected to provide an explanation as to what happened."

43. Further, in Dida Ali Mohammed v Republic, Nakuru Court of Appeal Criminal Appeal No. 178 of 2000 (UR), it was held that:

> " Then there is the circumstantial evidence which shows that it was the appellant who was the last person seen with the deceased before her death...As to when the deceased left the appellant's home and upto where the latter escorted her are maters which were peculiarly within the appellant's knowledge which we think, under section 111(1) of the *Evidence Act*, he was the only person who could but did not explain. And the evidence of recovery of the deceased's body consequent upon information the appellant gave are all circumstances which when taken cumulatively lead to irresistible conclusion that the appellant and no other person killed the deceased, and which exclude any other reasonable hypothesis than that the appellant killed the deceased."

44. Again,2022) in Kimani v Republic (Criminal Appeal 41 of [2023] KECA 1390 (KLR) (24th November 2023)(Judgment), this Court in analysing the applicability of the doctrine of 'Last Seen' with stated:

> " Having analyzed the evidence above, we are in agreement that indeed, it was the appellant who caused the death of the deceased and that the trial court properly applied the doctrine of 'last seen'. The doctrine of 'last seen alive' is based on circumstantial evidence where the law prescribes that the person last seen with the deceased before their death was responsible for his or her death and the accused is expected to provide an explanation as to what happened. In the instant case, the appellant picked the deceased and her brother, together with his own brother on the material day. He was the last person to be seen with the deceased. The body was recovered in their compound hours later. There is no break in the chain as PW5 went to the home of the appellant 30 minutes after he picked up the three children. Two of the children were in the appellant's home, despite his allegation that even the other child, T was not there when indeed PW5 could see T in the compound. He also did not justify why he lied to PW5 about the deceased and her brother, having gone to mama Wanja's place because this turned out not to be true. Concomitantly, he did not explain away the reason why, when he asked PW4 about the whereabouts of his brother and PW4 pointed in the direction of his brother, he took the opposite direction. Whereas the burden to prove the case rests entirely on the prosecution, the explanation given by the appellant as to what happened after he took the deceased is full of gaps and contradictions and being the last person seen with her he had a duty to give a proper explanation, in the terms spelt out by section 111 of the *Evidence Act*."

45. In the Nigerian case of Stephen Haruna v The Attorney General of The Federation [2010] 1 iLAW/ CA/A/86/C/ 2009 the Court had the following to say:

> " The doctrine of "last seen" means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus, where an accused person was the

last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to give an explanation relating to how the deceased met her death in such circumstance. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased."

46. The chain of events as we have analysed above attest to the fact that the deceased was staying with the appellant in the last days and hours preceding his death; that he is the only person who knew that the deceased was unwell; that, when PW3 to PW6 arrived at the scene, they found the house locked from outside, yet only the appellant had access to the house; and that the injuries the deceased had suffered were inconsistent with a fall. Piecing up all this chronology of events leads to the inescapable conclusion that the only person who could have murdered the deceased was the appellant.

47. We now grapple with the issue as to whether the appellant had malice aforethought when he killed the deceased. Section 206 of the *Penal Code* defines malice aforethought as follows:

Malice aforethought shall be deemed to be established by evidence proving 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.

48. Malice aforethought can be construed from the circumstances leading to the death of the deceased. In Paul Muigai Ndungi v Republic [2011] eKLR, this Court held that:

> "More particularly, malice aforethought is deemed established by the evidence proving an intention to cause death of or to do grievous harm to any person."

49. Also, in Daniel Muthee v Republic [2007] KECA 419 KLR,this Court held as follows:

> "When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan in a similar manner, he must have known that the act of cutting the deceased persons on the head with a sharp instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206 (b) of the *Penal Code*. In view of the foregoing, we are in no doubt that the appellant was convicted on very sound and watertight evidence as his guilt on the two counts of murder was proved beyond any shadow of doubt."

50. Malice aforethought constitutes the very actions of the accused at the time of attacking the deceased. If the offender carries out the attack with the sole intention of taking away a life, or causing grievous harm, that constitutes a mind which had prior malice to commit the offence. In this instance, it is glaringly clear that the injuries that the deceased suffered were so serious that they were clearly intended to either cause his death or grievous harm. That aside, as was indicated in the post mortem report, the parts of the

body that were targeted, being that the body had multiple stab wounds on the face, right mandibular around the chin, multiple rib fractures noted on both sides and bruises on the elbow region. The internal injuries were: multiple rib fractures on both sides, perforated left and right lung tissues and haemothorax of about one litre. The head also had multiple skull fracture and intracorneal bleeding which was epidural haematoma right beneath the skull bone, leaves no doubt that the deceased was meant to cease living. We thus conclude, just as the learned Judge did, that the appellant had malice aforethought when he killed the deceased.

51. The Ugandan Court of Appeal in the case of Chesakit Matayo v Uganda (Criminal Appeal No. 95 of 2004) [2009] UGCA 21 (20 May 2009) held:

> " 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."

52. In view of the foregoing, we find that the prosecution proved its case beyond reasonable doubt. We hereby uphold the judgment of the High Court at Mombasa (Onyiego, J.) delivered on 14th July 2023. We find the appeal to be without merit and hereby dismiss it in its entirety.

DATED AND DELIVERED AT MOMBASA THIS 9TH DAY OF MAY, 2025.

DR. K. I. LAIBUTA CArb, FCIArb.

JUDGE OF APPEAL

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F. OCHIENG

JUDGE OF APPEAL

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F. W. NGENYE-MACHARIA

JUDGE OF APPEAL

I certify that this is the true copy of the original.

signed

DEPUTY REGISTRAR