Githui v Republic (Criminal Appeal 39 of 2015)
[2023] KECA 1533 (KLR) (15 December 2023) (Judgment)

Neutral citation: [2023] KECA 1533 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL 39 OF 2015

K M'INOTI, F SICHALE & FA OCHIENG, JJA

DECEMBER 15, 2023

BETWEEN

PETERSON NJUGUNA GITHUI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(An appeal from the Judgment of the High Court of Kenya at Nakuru (Emukule J), dated 19th February 2015) In HC. CRA NO. 6 OF 2011)

JUDGMENT

1. PNG (the appellant herein) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya.

2. The particulars of the offence were that on an unknown date between 5th January 2011 and 15th January 2011, within Nyandarua County, he murdered EWK (hereinafter the deceased).

3. The appellant was tried and convicted of the offence and sentenced to suffer death. Being aggrieved with the conviction, the appellant filed this appeal vide a Supplementary Grounds of Appeal dated 15th September 2015, raising 8 grounds of appeal as follows;

    a. That the learned trial judge erred in law and fact in convicting the appellant in the instant case yet the prosecution did not prove their case beyond any reasonable doubt i.e. the prosecution did not prove the death of the alleged deceased EWK as indicated in the charge sheet.

    b. That the learned trial judge erred in law and fact in failing to note that the post-mortem report produced by PW9 Dr. JWN authored and signed by Dr. WK dated 21st January 2011, was in respect of EWK and not the deceased. Therefore, the caused (sic) of death was not ascertained.

c. That the learned trial judge erred in law and fact in failing to note that the cause of death of the deceased was not ascertained in the second autopsy report produced by doctor KJK, also allegedly signed by Dr. WK dated 20th January 2011 (and) was in respect of W and not the deceased.

d. That the pundit trial judge erred in law and facts in and in fact (sic) in relying on insufficient autopsy report which did not establish the cause of death, date and time of death since the internal examination was not done.

e. That the learned trial judge erred in law and fact in establishing a finding of guilt yet the major elements making up a murder case were not met i.e. the prosecution availed 11 witnesses in its bid to prove the charges and none of the witnesses established malice and or aforethought which are the major ingredients of murder.

f. That the learned trial judge erred in law and fact in finding the appellant guilty in relying on circumstantial evidence yet the inculpatory facts were not incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. It was erroneous for him to hinge his findings on the exhibits MFI 1 (A, B and C) voting card, poverty eradication card and purse with Ksh 3935/= respectively and mf2 (sic) (A and B) English and mathematics class V textbooks (vide judgment paragraph 72 and 73) (sic). It was not unusual for these items to be found anywhere in that premises of the appellant and the deceased who were married, it was her home for more than a decade.

g. That the learned trial judge erred in law and facts in concluding his conviction with circumstantial evidence as borrowed from Sawe v Republic. The appellant therein had complied with all elements of circumstances of an accused/appellant where murder of his beloved wife is a subject issue (he reported to the police, relatives, neighbours and all that were concerned and further complied with the police investigation requirements until the body was recovered hence watering down any circumstantial evidence the judge relied on to convict the appellant) he did what possibly a loving husband would have done in the circumstances. It was worth noting that in Sawe v Republic the appellant was acquitted.

h. That the learned trial judge erred in law and fact, in convicting the appellant by relying on the evidence of PW7; "on 6th January 2011 I called her at 6:AM and found her phone on "mteja" mode engaged" (judgment paragraph 80). He held that at that time the appellant had escorted the deceased to Nyahururu town is not credible. No evidence was adduced in court to prove that the deceased was with the accused/appellant at that time."

4. When the matter came up for plenary hearing on 18th September 2023, there was no appearance by Mr. Ombati for the appellant. The appellant however urged the Court to rely on his written submissions filed by his counsel dated 15th May 2023. Miss Kisoo on the other hand, learned counsel for the respondent relied on her written submissions and list of authorities dated 8th September 2023.

5. The appellant in his submissions condensed his grounds of appeal into two and submitted on grounds 5 and 6 only. It was submitted for the appellant that that the learned judge erred in law and facts in finding him of guilty yet the elements of the offence of murder were not proved. It was submitted that there was no direct evidence by any witness who claimed to have seen the appellant killing the deceased and that all the evidence tendered by the prosecution witnesses was based on suspicion.

6. The learned judge was further faulted for relying on weak circumstantial evidence and not taking into account that the appellant and the deceased were husband and wife and it was not in dispute that on the material night they slept together.

7. It was further submitted that it was clear from the evidence of the prosecution witnesses and the appellant that the appellant participated with other witnesses in looking for the deceased; his conduct showed that he was equally concerned to establish the whereabouts of the deceased and that no weapon was recovered from him. Ultimately therefore, it was submitted that the circumstantial evidence did not irresistibly point to appellant's guilty.

8. On the other hand, it was submitted for the respondent that all the ingredients for the offence of murder had been proved for reasons inter alia that PW4, who was a sister to the deceased gave an account of the last telephone communication she had with the deceased on 5th January 2011, at around 7:00 pm; that the deceased had confirmed to her that she was with the appellant; that the following day, she could not reach the deceased on her on phone; then on 7th January 2011, she visited the deceased's home and was informed by a neighbour of her presence on 5th January 2011; then on 15th January 2011, she was informed of a human body floating at Kamwana dam which was not very far from the deceased's home. She identified the body as that of her sister (the deceased) from the gap in the upper teeth.

9. It was further submitted that PW9, a doctor attached to Nyahururu district hospital who produced the post mortem report in respect of the deceased determined the cause of death to be cardio pulmonary arrest due to significant loss of blood and that from the evidence, the fact of death of the deceased was comprehensively proved.

10. Regarding the unlawful act which caused the death of the deceased, it was submitted that the prosecution was able to prove the guilt of the appellant as the perpetrator of the offence through circumstantial evidence; that the appellant was the last person to have been with the deceased on 5th January 2011, immediately before her disappearance; that the deceased slept at the appellant's house on the night of 5th January 2011, thus the deceased must have met her death at the hands of the appellant and that further some of the deceased's personal belongings were recovered from the appellant's house.

11. It was thus submitted that all these facts were circumstantial evidence to prove that the appellant was responsible and did cause the death of the deceased.

12. Finally, on malice aforethought, it was submitted that the post mortem report revealed how the gruesome murder was executed and that the nature of the murder left no doubt as to the intention of the killer and that there was a deliberate attempt to cut short the life of the deceased in the most inhuman and gruesome murder.

13. We have carefully considered the record of appeal, submissions by counsel, the authorities cited and the law. This being a first appeal, this Court is mindful of its duty as a first appellate court. This duty was well articulated by this Court in Erick Otieno Arum v Republic [2006] eKLR as follows:

> "It is now well settled, that a trial court has the duty to carefully examine and analyse the evidence adduced in a case before it and come to a conclusion only based on the evidence adduced and as analyzed. This is a duty no court should run away from or play down. In the same way, a court hearing a first appeal (i.e. a first appellate court) also has a duty imposed on it by law to carefully examine and analyze afresh the evidence on record and come to its own conclusion on the same but always observing that the trial court had the advantage of

seeing the witnesses and observing their demeanour and so the first appellate court would give allowance for the same"

14. A brief analysis of the evidence in the trial court is however necessary so as to reach our own independent conclusion on the guilt or otherwise of the appellant. The evidence before the trial court was as follows; JWT testified as PW1. It was his evidence that on 5th January 2011, at about 6:45 pm, he was at home when he went to his neighbour's house (the appellant), to look for his cock that had disappeared. He found the appellant together with the deceased. That, as he slept, he heard some noises emanating from the appellant's house and he exchanged pleasantries with the appellant and the appellant told him that he had gone to escort his wife (the deceased) to [Particulars Withheld] Girls Secondary School.

15. That later on, he told his mother that Mama "R" (the deceased) had gone to a school but had not returned. After a while, the appellant called him and told him that he had been called by the deceased's sister concerning the disappearance of the deceased and that the appellant went to the police whereupon he was detained. Later on, on a Saturday, they were called by some people and informed that a body had been found which they identified to be that of the deceased as she had a gap on her upper teeth.

16. PW2 was MNK. She testified that the deceased was her daughter and that sometimes in the month of September 2010, the deceased had gone home alone as her husband (the appellant), had refused to pay school fees for their daughter who was then in form one at [Particulars Withheld] secondary school. That, subsequently the appellant came home and requested for dialogue but the deceased declined the request.

17. It was her testimony that on 3rd January 2011, the deceased came home and informed her that she wanted to travel to Nyahururu to collect her daughter's result slip and she subsequently proceeded to Nyaururu on 5th January 2011. She further testified that prior to travelling to Nyahururu, she had a conversation on phone with a person she suspected to be the appellant.

18. That the following day on 6th January 2011, she called her other daughter who was based at Kitengela who informed her that the deceased's phone was off air. She subsequently called her other daughter who is based in Nakuru and asked her to call the school in [Particulars Withheld] and enquire whether the deceased had indeed gone to the school to collect a transfer letter but she was informed that she had not. Later on, one of her daughter's informed her that the deceased's body had been found dumped at Kamwana dam.

19. EKK testified as PW3. It was his evidence that on 8th January 2011, he was called by his sister (PW4) who informed him that the deceased had gone to Nyahururu and had not been seen since and that her phone had been switched off. The following day, he went to Nyahururu police station together with the appellant and then proceeded to the home of the appellant but they did not find the deceased.

20. On 15th January 2011, the police called him and informed him that a body had been found at Ngomongo dam without a head, and half leg without arms. On the following day he proceeded to the appellant's house in the company of the police and a search was conducted whereupon the police found the deceased's voting card, women poverty eradication card and a purse which had some cash and primary school text books which were in the name of his elder sister's daughter and the deceased's child. He later identified the deceased's body.

21. JWM testified as PW4. It was her evidence that on 5th January 2011 at about 7:00 pm, she was called by the deceased who was her sister who informed her that she was with the appellant and that she had gone to collect a transfer form for her daughter. It was her further evidence that on 6th January

2011, her other sister who was based in Kitengela called her and told her that there was no response from the deceased's phone. She called the deceased's phone and confirmed that there was no response whereupon she called the appellant who informed her that he was not with the deceased.

22. On 7th January 2011, she went to the appellant's house and a neighbour informed her that the deceased had been there on 5th January 2011. On the following day, the incident was reported at the police station and a search for the deceased was mounted from 8th January 2011 to 15th January 2011.

23. It was her further evidence that on 15th January 2011, at about 3:00 pm she was called by her husband and informed that a body had been found at Kamwana dam which was not very far from the appellant's home. She proceeded to the scene and she was able to identify the body as that of the deceased from the gap on her upper teeth.

24. On 16th January 2011, she returned to the appellant's house in the company of police officers and the appellant to conduct a search whereupon a black purse that contained the deceased's electors card, poverty eradication card and some cash was recovered. She later attended the post mortem.

25. JWW testified as PW5. It was her evidence that on 5th January 2011, she was a student at [Particulars Withheld] girls and that her mother (the deceased) was making arrangements to transfer her to another school. The deceased travelled to Nyahururu to facilitate the transfer. On 15th January 2011, she was called and informed that the deceased's body had been found.

26. PW6 was Corporal KS attached to Nyandarua CID Crime Scene Support Services. He took photos of the deceased and prepared a report which he produced in court as an exhibit.

27. AWK testified as PW7. It was her evidence that the deceased who was her sister had visited her in September 2010, until 3rd January 2011, when she left for Nyeri then to Nyahururu to make arrangements to transfer her child from Nyahururu to a school in Nyeri.

28. That on 5th January 2011, she called the deceased and she answered the phone and told her that she would call her back. The deceased's voice sounded faint and was not her usual voice. That, she called her again the following day but she could not reach her as her mobile phone was switched off, whereupon she called her elder sister (PW5), and informed her that she could not reach the deceased.

29. It was her further evidence that PW5 subsequently visited the appellant's home and the appellant informed her that he had escorted the deceased to the school to obtain letters of transfer and that from thereon, there was no other information regarding the deceased until 15th January 2011, when PW3 called her and informed her that the deceased's body had been found in a dam. That on the following day on 16th January 2011, they visited the appellant's home alongside PW5 and the police and the police conducted a search and recovered the deceased's pouch that contained some money, a voter's card and a poverty eradication card belonging to the deceased and two textbooks.

30. PW8 was Corporal RN attached to Nyahururu police station. He testified that on 8th January 2011, he was at the police station when the appellant came and reported that the deceased who was his wife and who he had separated from had come to visit him on 5th January 2011; that on 6th January 2011, he had escorted her to Nyahururu town near Ngarua stage to take a vehicle to Gatero secondary school where she expected to collect a letter of transfer for her daughter and that he had tried to communicate with her in vain.

31. That, the appellant further informed him that he had tried to contact the relatives of the deceased who confirmed to him that she had not reached Nairobi where she used to reside.

32. He further testified that on 16th January 2011, he got information from his counterparts from the CID who informed him that the body of the deceased had been found cut into pieces and thrown in a dam not too far from the appellant's house. He subsequently accompanied his colleagues from the CID together with the appellant to his home where a search was conducted and they managed to recover the deceased's purse under the mattress which contained her elector's card, card for poverty eradication and Kshs 3,975/= and two textbooks.

33. PW9 was Dr. JWN attached to Nyahururu district hospital. He testified on behalf of Dr. WK and produced a post mortem report in respect of the deceased. According to the report, the body was badly decomposed due to exposure to water and it had a cut along shoulder, hip, mid joints and the body was decapitated. The hands were missing and were severed along the shoulder joints. Both thighs and limbs were separated from the body. No internal autopsy was conducted due to the level of decomposition as stated above.

34. The doctor formed the opinion that the deceased died as a result of cardio pulmonary arrest due to exponentiation which means significant loss of blood depending on individual fitness and age.

35. PW 10 was Dr. KJK attached to Nyahururu district hospital. He produced a post mortem report in respect of the deceased and corroborated PW9's evidence that it was impossible to do internal examination as the body was badly decomposed. He opined that the cause of death was multiple injuries coupled with decapitation leading to pulmonary arrest.

36. PW11 was Corporal SN then attached to CID Nyahururu. He testified that on 15th January 2011, he was instructed to take over a case. He subsequently arrested the appellant. He together with his colleagues recovered the body of the deceased from a dam.

37. On 16th January 2011, they took the appellant to his house and conducted a search and managed to recover a black wallet containing Kshs 3975/=, an electors card, and identity card for poverty eradication all belonging to the deceased and two textbooks.

38. The appellant in his defence gave a sworn testimony and called no witness and denied having committed the offence. It was his evidence that he last saw the deceased on 6th January 2011 and that on that date, he had escorted the deceased to Ngarua bus stage. After escorting the deceased, he returned home and spoke to the deceased who informed him that he was yet to get a vehicle and that that was the last time that he spoke to the deceased. That, he later reported her missing on 8th January 2011 and that he was arrested on 13th January 2011.

39. Having carefully gone through the record and the pleadings, we have framed the following two main issues for determination:

    1. Whether the learned judge erred in law and in fact in relying on circumstantial evidence? and

    2. Whether the learned judge erred in law and fact in arriving at a guilty finding when the elements/ingredients of the offence had not been proved?

40. Turning to the first issue, it is indeed not in dispute that no one witnessed the deceased being killed and the date when the offence was committed is not even known. The prosecution's case was therefore entirely hinged on circumstantial evidence.

41. In the locus classicus case of *Rex V Kipkerring Arap Koske & 2 Others* [1949] EACA 135 it was stated as follows as regards circumstantial evidence:

> "In order to justify a conviction 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 and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused." (Emphasis ours).

42. In *Musili Tulo v Republic* Cr. App. No. 30 of 2013 [2014] eKLR, this Court laid down the test to be applied in considering whether circumstantial evidence can find a conviction by stating 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 Accused 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 tendencyunerringly pointing towards the guilt of the Accused;
> >
> > (iii) the circumstances taken cumulatively, should from 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."

43. Having said that, it was submitted for the appellant that he equally participated with other witnesses in looking for the deceased and that this showed that he was concerned to know the whereabouts of the deceased and that further no weapon was recovered from him and neither were blood stains found in his house.

44. We have painstakingly gone through the evidence that was adduced before the trial court. PW1, confirmed that he saw the deceased with the appellant on 5th January 2011. The appellant in his own testimony indeed confirmed that the deceased spent the night of 5th January 2011 in his house and that was the last time that she was seen alive. It was his further evidence that he was with the deceased on 6th January 2011, having escorted her to Ngarua bus stage to get a vehicle; that he left the deceased at Ngarua stage on the morning of 6th January 2011, that after escorting the deceased, he returned home and went on with his usual chores and that when she called the deceased on phone, the deceased informed her that she was yet to get a vehicle. PW1 in cross examination stated that on 6th January 2011, he heard someone sneezing in the morning and that he did not see the appellant escorting the deceased but the appellant had told him that he had gone to escort the deceased.

45. It is common ground that the deceased was last seen alive on 5th January 2011. It is also not in dispute that she had spent the night of 5th January 2011 in the appellant's house and her severely dismembered body was found 10 days later at Kamwana dam which dam was not very far from the appellant's house.

46. It is also common ground that although the appellant and the deceased were married, they were not in good terms and they had separated, a fact which was confirmed by the appellant and PW2 who was the deceased's mother who testified inter alia that the deceased had in the month of September 2010, returned home because the appellant had refused to pay school fees for their daughter.

47. PW7 on the other hand who was the deceased's sister testified inter alia that on 5th January 2011, she had called the deceased and the deceased answered the phone and they did not talk as the deceased told her that she would call her back and her voice sounded faint and was not her usual voice. It was her further evidence that on the following day at6:00 a.m, she called the deceased but her phone had been switched off. According to PW7, the last time that she heard from the deceased was on 5th January 2011, when the deceased told her that she would call her back which she subsequently never did.

48. As stated above, it is not disputed that the deceased spent the night in the appellant's house on the night of 5th January 2011 and that was the last time she was seen alive. By virtue of the provisions of Section 111 (1) of the *Evidence Act* CAP 80 of the Laws of Kenya, the appellant was bound to explain what happened to the deceased. That section provides;

> " 111. Burden on accused in certain cases.
>
> (1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:" (Emphasis ours).

49. The contention by the appellant that he escorted the deceased to Ngarua stage on 6th January 2011 at 6:00 am, and that that was the last time he saw the deceased was suspect as the deceased did not reach her intended destination namely, [Particulars Withheld] Girls Secondary School where she was to pick a transfer letter for her daughter. Her remains were found 10 days later, badly mutilated at Kamwana dam which dam was not very far from the appellant's home. Further, the contention by the appellant that he spoke to the deceased on phone after escorting her and that the deceased informed her that she had not yet gotten a vehicle was not credible as the evidence on record clearly shows that the deceased's phone was switched off on 5th January 2011 never to be switched on again and PW4 and PW7 confirmed as such in their evidence.

50. In addition, the deceased's personal items namely; purse, voters card, poverty eradication card and Kshs 3975/=were found hidden under the mattress in the appellant's house. Ordinarily, such items are not normally kept under a mattress and the only logical inference that can be made is that the appellant was guilty and was up to some mischief. Indeed, as was rightly put by W7 in cross examination thus; "My sister could not go without her pouch and the money. I would not know whether she had other money but she could not leave without her "Kibet" pouch. It is not usual."

51. Applying the tests laid out in above two cases we have cited above, we think we have said enough to show that the circumstantial evidence on record unerringly point towards the guilt of the appellant and, taken cumulatively, it does form a chain so complete that there is no escaping from the conclusion that within all human probability, the deceased was brutally murdered by the appellant and no one else. By the same breath, there were no other co-existing circumstances that weakened or destroyed the inference of guilt of the appellant, and we are fully in agreement with the holding by the learned judge

that "the purported escort to Ngarua bus stage and subsequent report to the police and purported search was nothing more than a camouflage and smokescreen to deflect attention from himself."

52. Additionally, and the appellant being the last person who was seen with the deceased alive, we are of the considered opinion that this would be an appropriate case to invoke the doctrine of "last seen". See the Nigerian Case of *Stephen Haruna V. The Attorney-General of The Federation* (2010) 1 iLAW/CA/A/86/C/2009 where the court opined persuasively thus:

> "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."

53. We fully agree and adopt the reasoning taken by the Nigerian court in the above case and dismiss this ground of appeal in its entirety.

54. Turning to the second ground of appeal, the learned judge was faulted in arriving at a guilty finding when the ingredients of the offence had not been proved. It was the appellant's contention that the prosecution's case was entirely based on suspicion.

55. The ingredients for the offence of murder were clearly set out by this Court in the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR as follows;

> "a) That the death of the deceased occurred;
>
> b. That the accused committed an unlawful act which caused the death of the deceased; and
>
> c. That the accused had malice aforethought."

56. Turning to the first ingredient, it is indeed not in dispute that the death of the deceased occurred. PW1, PW3, PW4 PW5 and PW7 all identified the deceased's body which was badly decomposed and severely dismembered and they all stated that they were able to identify her by a gap that she had on her upper teeth. Additionally, she was their close relative as she was a sister to PW3, PW4 and PW7 and PW5's mother.

57. Additionally, PW9 and PW10, the doctors who produced the post mortem report indicated that the cause of death was cardio pulmonary arrest due to exponentiation which means significant loss of blood depending on individual fitness and age and multiple injuries coupled with decapitation leading to pulmonary arrest respectively. We note that there was a slight discrepancy from the evidence of these two witnesses which in our considered opinion was immaterial as in any case it did not change the fact that the deceased had died. Consequently, we are satisfied that the death of the deceased occurred.

58. As to whether it is the appellant who committed an unlawful act that caused the death of the deceased, we have discussed at length that the circumstantial evidence in this case left no doubt in our minds that it was the appellant and no one else who killed the deceased in cold blood and in a very brutal manner and we will not rehash this issue.

59. Lastly and as to whether the appellant had the requisite malice aforethought as at the time of the commission of the offence, Section 206 of the *Penal Code* cap 63 of the Laws of Kenya is instructive in

this regard as it provides circumstances under which malice aforethought is deemed to be established. The same provides as follows;

> " Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstance: -
>
> 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."

60. In the instant case, the deceased died a chilling, grisly death. The post mortem report showed that her body had been cut along the shoulder, hip, knee joints, decapitated, the torso was intact, the injuries were unascertainable due to the level of decomposition, the hands were missing - severed along the shoulder joints, the right limb was missing and both thighs and lower limbs had been separated from the body.

61. It is apparent that the appellant's intention in this case was not only to cause grievous harm to the deceased but to actually kill the deceased in the most brutal manner. As if that was not enough, the appellant dumped the deceased's body in a dam probably to make sure that the deceased's body would never be found. As a matter of fact, internal autopsy was not conducted due to the level of decomposition. The appellant's act and conduct clearly shows that he had a guilty mind and was determined to eliminate the deceased at all costs and for good. The upshot of the foregoing is that this ground of appeal is without merit and we accordingly dismiss the same in its entirety.

62. Accordingly, we find the appellant's conviction for the offence of murder to be safe and sound, which conviction were hereby affirm.

63. Turning to sentence, appellant was handled a mandatory death sentence as provided for by Section 204 of the *Penal Code* cap 63 of the Laws of Kenya. We note that the appellant has not appealed on sentence and he has not even attempted to address us on the same. Be that as it may, we have considered the circumstances under which this offence was committed. The deceased died a painful, chilling brutal death and several body parts of her body had even been dismembered. As if that was not enough, the appellant dumped her body in a dam and as at the time that her body was discovered, it was badly decomposed to an extent that it was not possible to carry out internal autopsy. We abhor and condemn the appellant's actions in the strongest terms possible. No human being deserves to die in the manner that the deceased died.

64. In view of the above, the appellant is undeserving of any mercy and we have no basis whatsoever of interfering with the sentence that was imposed by the trial court.

65. The totality of our findings is that the appellant's appeal is without merit and the same is hereby dismissed in its entirety.

66. It is so ordered.

67. This Judgment is delivered in accordance with Rule 34(3) of the *Court of Appeal Rules,* 2022.

DATED AND DELIVERED AT NAKURU THIS 15TH DAY OF DECEMBER, 2023.

F. SICHALE

.....

JUDGE OF APPEAL

F.A OCHIENG

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR