



**Republic v M'imuti (Criminal Case 114 of 2018)
[2025] KEHC 1325 (KLR) (27 February 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 114 OF 2018
EM MURIITHI, J
FEBRUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHARLES KIRANKI M'IMUTI ACCUSED

JUDGMENT

1. On 23/1/2019, Charles Kiranki M'Imuti (the accused) was arraigned in court to plead to the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence were that on 13/11/2018 at Kabui Village, Michiimikuru Sub-location, Miciimikuru Location in Tigania Central Sub County within Meru County, he murdered Joseph Kalawa M'Imuti alias Marete.
2. After he denied the charge, the prosecution called 8 witnesses to prove its case.

Evidence

3. PW1 Angelica Kanari testified that, "I live at Cianda at Miciimikuru, Tigania East County I work at a shamba as a farmer. On 12/11/2018 at 6:00 am, I went to pick tea with my husband Joseph Kalao. He is deceased. We went to pick tea at Kabuli near our home. At 4:00pm that day we took tea to the picking and I left him there and went home. On 13/11/2018 at 6:00 am in the morning I woke up and went to prepare tea. I had screams coming from a neighbor home. It was about 20 metres (from the witness box to the gate of the court registry) it is near. I went to see what was happening. I went alone. When I arrived at the home of the neighbour, I found it was my husband who had died. He was lying on a path way near the tea bushes at the neighbours home. His body was below the tea plants. I went back home. At 7:00 am in the morning on the same day, Police officers from Mikinduri Police Station. Came, they took the body and took it to Mutindwa Hospital, Meru level 5 hospital. In the evening at 8:00pm on the same day, I do not recall the person who came. There were several people who came for



a meeting. On 14/11/2018 at 7:30am in the morning, people came and besides that the person who had done the act had disappeared. The person is Charles Karanki. He is the accused (pointing) The people set his house on fire. I was at the time with a child. I know the accused. He is a brother to the deceased husband. I have known him for 12 years from the time I was married by the deceased. On 15/11/2018 at 10:00pm in the night, I heard that the accused had been arrested. I was informed by the Chief from Athwana location. He was arrested at Athwana and taken to Mikinduri Police Station. I later recorded my statement at Mikinduri Police Station.”

4. On cross examination, she stated that, “On 13/11/2018, I woke up at 6:00 am and heard screams. On 12/11/2018, I had taken tea to the Tea picking area. He used to sleep at Tea picking point. He was in charge of the Tea picking point. He would sleep there to guard over the tea. When I saw the body of my husband I left immediately and went back home. I did not stay there. The statement was written for me by the police. [statement that witnesses saw the deceased’s body with stab wounds] It is not true that I saw injuries on the body. [witness hesitates in responding to the questions as to whether she saw injuries on the body] I did not stay there. The Police came to take the body and took it to Mutindwa [Meru level 5 hospital]. I was not there when they took the body. [statement that the police took pictures of the scene] it is not true. I did not see the police take pictures. I had already gone back home. [statement that witness had been taken back home after seeing the body by other women and men] I went home alone. [Witness declines to answer question whether the statement is correct]. It is true that people came to pass condolences. I could not tell who came. They were many people. [Statement states that she identifies Charles Karanki’s (accused) and his wife] It is true that Charles Karanki came but he did not stay long other people came after he had left. I told her particularly that I did not know who had come to pass condolences but before Charles and his wife had come and left. On 14/11/2018 people came and said that Charles is the one who had killed my husband and they burnt his house. I can’t identify any of the person who had torched the accused house. I heard that he is the one who had killed my husband from the people who had come on 14/11/2018. I have known Charles for 10 year and we have lived in the same compound. I knew his wife. She comes from an area called Kamiguru, Kamiguru near Kioro in Tigania East. The area is not in Athwana region.”
5. PW2 Peter Kingari testified that, “I reside at Kabuli village Micuu-mikuru. Tigania east. I work as a farmer and tea picker. I pick tea at Tigania Kabui area. On 13/11/2018 at 6:00 am in the morning, I heard screams. I was asleep at the time. The screams were coming from the side of the tea picking point at Kaburi. I went and found my brother Joseph Kaburo had been killed. The body was in the tea plantation. The body had started turning black. I did not see any injuries on the body. I was with my brother Raphael Kairania. Raphael called Chief who in turn called the police. The Chief is known as Rumano Muturia. It is the chief who called the police station. The police came and took the body. I know he was brought to Meru Hospital. We met as a family. We were more than eight persons. I can’t recall who was there. We met at the home of Raphael Kariani. I remember there was Muriuki, Mwitaria, Gitonga, Raphael, Julius Gaitumi, Waigunga and myself, there was also Kaberia. After the meeting while we prepared for the funeral ceremony. The accused is my brother. During the meeting Charles had ran away. On 14/11/2018, at 9:00 am I do not recall what happen. We went to report the matter to hospital. We went with Raphael, Kanari, and I. We reported at the Mikinduri Police Station. I later recorded my statement. On 15/11/2015 at 11: 00PM. I do not recall when the accused was arrested.”
6. On cross examination, he stated that, “I have told court the truth. On 13/11/2018, I heard screams while I was asleep. I went to the place where the screams came from. I found my brother’s body. I did not check whether he had any injuries I was afraid. I recorded a statement. [statement that the accused had been cut at the back of his neck] It is not true the deceased had been cut on the back of his neck] It is not true that I saw the deceased had been cut at the back of his neck. I am the one who recovered the statement. The statement is incorrect. It may be that I have forgotten some of what I saw. I did not



check the body as I was afraid when I saw that my brother had died. Police came and took the body. I was not near the place but I saw the police take the body and put it in the vehicle. [statement that police took photographs at the scene] NO. I did not see the police take photographs. I may have seen the police take photographs but I may have now forgotten. What I have told the court is true. It is true that we had a meeting at Raphael Kailemia. We were 8 of us. The accused had run away. He was not at the meeting. [statement states that the accused was at the meeting] When we met at Raphael's home Charles the accused was not there. The statement is incorrect. Charles was not there. Maybe he was there but, on that day, I was confused. It is possible witness is confused in his evidence? It is true that I was confused because of the events.”

7. PW3 Gervasio Kamaitha testified that, “I come from Michii Mikuru Sub-Location. Michii Mikuru location. I work as a farmer. On 13/11/2018, at 6:00 am I heard screams from Marete's home. I went out together with my family. We found Marete Kanana had been killed and he was laid inside tea plantation and only a leg could be seen. When we got there other village members came. We called the police who came and took the body. When I got there, I found the body. I found his brothers Mwiti, Raphael Itaigua and other people I can't recall. The deceased had a cut on the head and teeth bite marks on the right side of the face. After one day, there was a family meeting at Kanana's family. At the meeting, one Charles came having covered himself with a Boshori cap which conceals the face having only the eyes. I saw Charles coming. When he saw the other were there he decided to ran away. Charles is a brother to the deceased. When he saw his other brothers, Raphael Mwiti Gitonga, Gitaigua and Zaituri, he ran away. They asked him why he was running away. They decided to go and conduct a search on his house. We went to the accused's house. It had been locked. It was broken into by his brother Gitaigua and he went inside. During the search we found a knife with blood on it in the bedroom under the mattress. It was two roomed houses. The people came. They were annoyed. They burnt the house and the cows. I took the knife to the police. Charles had at this time ran away when he saw the people. I see the knife (MF1 1). Later we recorded statements at the police station and I later heard that he had been arrested. It was after sometime. I knew Charles before the date. He is the accused. (pointing). I also knew his brother. We are in the same area.”
8. On cross examination, he stated that, “Charles came with the cap, which covers the entire face except the eyes. The deceased's brothers who were at the meeting were Raphael, Gitonga, Zaituni, Gitaigua. I am their neighbour. I know them well. Peter Kingari M'Iguti was present. It was a family meeting. I am only a neighbor. I am an in-law. Zaituni is married to my step-sister. Charles came wearing the Bochori. I did not know that someone said the accused had run away. The witness must have counted his brothers. He may have left me out because I am not a brother. The house of the accused was burnt and his cows killed. [Kingari said the body had decomposed] It is not true as it was only the day after. I told the court of the injuries that I saw.”
9. PW4 Raphael Kailemia testified that, “I come from Michiimikuru. I work as a farmer. I know the accused, he is my brother. The deceased is also my brother. On 13/11/2018, I heard screams at about 6:00 am. I got up and went out near my house. There were many people. I found that my brother Joseph Kalawa had died. When I saw him, I went back and stayed aside for a short time. After a few minutes the Assistant Chief Romaano Muturia came with Police Officers. When they came, they asked people to take his body from where it was in Tea bushes and place it by the path. When they were removing the body, I saw the injuries on the body. There was injury on the back of the head. It happened to be a cut with a sharp object. There was another injury below the right-side eye. The police officers covered the body with lesu. We called officers from Mikinduri Police Station who went and took the body. We were all shocked, we went back home. We were with the accused. We had a meeting at my home and we tried to figure out how it happened. While we were at the meeting. Charles had covered his head and we did not know who had done the act. We departed and each went on their way. After the meeting,



the wife of the deceased, who is the wife to my brother –Angelica Kanuiyo- called me in the evening on the same day and she told me that her children had told her that Charles had injury on his left index finger. I slept but I informed Gitonga Stephen about the information of the injury on Charles. He called the Assistant Chief so that he would come in the following day so that we do investigation. On the following day the Assistant Chief came with Police Officer. We went to Charles’ home. He was not there. We did not find him. We found the door broken, some people who saw him running away were then had saying “Ndio huyu, Ndio huyu” As we followed mob came and burnt his house, cut up his miraa and cows. When we went to the home of Charles, we were with Assistant Chief, two police officers and I. We did not get into the house it was the mob that went into the house. We were following him. The people entered before they burnt the house. I know one of the people in the mob they entered into the house. Grevesio was one of them. The people surrounded the house and later burnt house. The owner of the plantation where the body was found is Joshua Murithi.”

10. On cross examination, he stated that, “The family meeting before the body was taken. It’s before the body was taken by Police in the morning. I was at the meeting. Charles was also at the meeting. He was wearing a coat with cap. It is the jacket which had blood. He was not wearing a cap which covered everywhere except the eyes. Assistant Chief came with Police Officers. Charles was not there at home. What point did Charles go away? We did not find him. We did not see him run away. The meeting was on the previous day before we went looking out for him. I did not see Charles running away. I went with Assistant Chief and found the door locked. We heard people saying Charles had been seen running away. We went after him. We did not enter the house. After going after Charles, we came back and found the house had been burnt. We were with Assistant Chief and the Police. Could you have seen people entering the house? No, I could not see a person getting in the house of the accused.”
11. PW5 Jane Karimi testified that, “I come from Michiimikuru. I am a farmer. I knew the deceased Joseph Kalawa alias Marete. Marete was in a committee for a Tea buying group. I was also in the group. The group used to sell tea at St. Anthony Kabui. On 13/11/2018, we were with Kalawa at the Tea buying Centre. We stayed there until 1:00 pm in the night. The K.T.D.A vehicle came. They weighed the tea and I left leaving Kalawa with the driver of the vehicle while weighing his tea. I went home. It was morning at 6:00am, I heard people screaming. It is a little far from the place to my home. I went and found he had died. Kalawa did not have any injuries at the time we were weighing our tea at the Tea Buying Centre.”
12. On cross examination, she stated that, “On 13/11/2018, I was with the deceased. We were with him for the time when we took the tea at about 11:00pm in the night upto 1:00 am when the vehicle came to take the tea. We usually guarded our tea during this time at 11:00pm in the night. I left the centre at 1:00 am in the night. I went home and left the deceased at the tea buying Centre. I heard about the screams and his death the following day.”
13. PW6 Mutembei Domiciano testified that, “I come from Miciimikuru. I work as a farmer. On 12/11/2018, we left home at night and went to Center Twenty Tea Buying Centre. I found Jane Muthuri, Eric, Joseph Kalawa. We waited for the K.T.D.A vehicle which came at 1:00 am. It was being driven by a driver Muchui. They weighed the tea and finished at 2:00 am. The vehicle took the tea to factory. I was left with Joseph Kalawa. It was the 2 of us only. We parted when he went towards his home and I went towards my home. Our respective homes are in different directions. At about 9:00 am in the morning, I was informed by my mother that Kalawa had been found killed. I could not go where he had been killed as he was my close friend. In the evening, when I was with him, he was normal with no injuries.”
14. On cross examination, he stated that, “From my home to the deceased’s home is about 3 km. From my home to the Tea Buying Centre is about 1 km. From my home to the scene? I did not go to the



place. As he was my close friend. I was shocked as we had been together the previous night. I couldn't get the strength.”

15. PW7 Dr. Florence Kiragu, a medical officer at Meru Teaching and Referral Hospital produced the deceased post mortem report which had been filled by her colleague Dr. Kisilu on 22/11/2018 as Pexh. 2. The deceased body had deep bruises over the face and the frontal area and over zygomatic bone concealing the ear to maxilla (upper jawbone). There were also deep cut wounds in the occipital area to the back of head of 12 cm with scalp hematoma. The deep cut was from the vertex at the top of the head to the back and respiratory right plural hematomas on the lungs. On head, there was a cut wound of 12 cm with scalp hematoma and the cause of death was head injury secondary to trauma.
16. On cross examination, she stated that, “Deep cut wound on occipital area. The occipital bone is the bone at the back of the head upto to the vertex on top of the head. The area described on the post mortem is on the head not the neck. Plural hematoma – it is the lung cavity- plural space. The blood had accumulated in the lungs. It may be caused by penetrating trauma to the chest or forceful blunt force trauma to the chest that cause rupture of the vessels and accumulation of blood. As by the Report, it shows right plural hematoma. In the external appearance there is no chest injury shown.”
17. PW8 PC Stanley Kipchumba currently attached at Meru Police Station and previously of Mikinduri Police Station where I was involved in the investigation, testified that, “On 13/11/2018 at around 6:59 am a report was made through telephone from area assistant chief Miciimikuru Sub-location to one Romano Koome that there was a body of a Meru male adult by name Joseph Kalawa alias Marete dumped inside a Tea plantation at a place called Kabui village. I together with OCS Mikinduri Chief Inspector Charles Mwangi accompanied APC James Saitoti proceeded to the scene whereby we found the body of Joseph Kalawa alias Marete inside tea bushes. On observing the body, it had a deep cut wound on the back side of the head and visible human bite on the right side of the cheeks. The body was found in tea bushes in farm belonging to the members of the community of Kabui village. The investigations revealed that there was a struggle before the deceased was murdered while he was walking to his home from Kabui Tea buying Center in the early morning of 13/11/2018. We found the 6500/= and a mobile phone indicating that the deceased was not robbed of his belongings. We photographed the scene and did a rough sketch plan. I have the rough and fair sketch plan. We removed the body from the scene to Meru level 5 hospital awaiting post mortem. I recorded the witnesses' statement. On 14/11/2018 at around 1:00pm we received information from the family of the deceased that the house of the suspect Charles Kirianki a brother to the deceased had been burnt down by members of the public after a suspect weapon, namely knife was discovered beneath the mattress inside suspect's room. After recovery of the weapon the suspect who was present disappeared into a nearby bush to an unknown destination. We went to OCS with C.I Mwangi at Kabui village and we established that 2 house semi-permanent structures had been brought down by fire and nothing was recovered from the houses. We also found that two cows belonging to the suspect had been slaughtered and the meat carried away. On 15/11/2018 at around 7:00 pm. We received information that one Charles Kirianki had been sighted within Kikurune area of Kathwana Location. We proceed there with a number of police officers and led by members of the public and traced the suspect and found him hiding on top of a mango tree. He climbed down but as he tried to run away, he was arrested by police and members of the public. We escorted him to Mikinduri, Police Station. I interrogated the suspect and we were informed that he was within that place after visiting his farm at Gikurune. On 24/11/2018, the body of the deceased Joseph Kalama was examined by Doctor of Meru Teaching Hospital on postmortem in the presence of the deceased family. I attended the postmortem Dr. certified death as caused by head injury leading to trauma. The suspect was later charged with the offence before the court. After arresting the suspect, we escorted him to the Mikinduri Police Station and interrogated him as to why he was at Gikurune instead of Kibui village in connection with the case before the court. He said he



had gone to his farm. It was not true as the area chief said the suspect did not own any farm in the area. He also did not provide me with any parcel number of the land. On interrogation, I also noted that he had some scars on the face and on both hands and when I asked him about the injuries, he said that he had sustained the injuries while fencing his parcel of land at Kabui village using barbed wire. The injuries were bruises on the hands. Knife recovered under the mattress is before the court. I wish to produce it as exhibit. MF1 I Knife now marked PEx. No 1.”

18. On cross examination, he stated that, “I got the knife from the area Chief together with some elders after it was recovered by members of the public. I was informed that it was recovered under mattress of the suspect’s bed. I do not recall who recovered it but it was given to Chief and elders. [Brother accused Raphael Kailemia (PW4) said he had led the other including the Chief to the accused’s house and that no one entered the house]. Did you investigate what you were told by the people? The information I got we went there and found the house had already been burnt. The knife was presented by members of the public but I cannot ascertain who recovered the knife and from where. [statement that investigating office took accused to Mikinduri and blood sample taken] There was a blood sample taken. The knife had no blood stains and it had already been tampered with by members of the public. The sample was disposed. Are you aware that accused wife comes from Athwana? I was not aware. Did you inquire from the accused? [It is put to witness that the accused was in a farm belonging to Duncan Mwenda who is his in-law and his wife Marion Mwari comes from the family.] It is not true the accused was at another person’s farm named Mr. Kobia. He was not produced as a witness. [Last statement of accused last paragraph] I am the one who recorded the statement of the accused. Accused states that he went to his farm with his wife and they continued tilling until evening. Did you find out who the wife was and where she was? On 16/11/2019 I did not find out whether the accused was with the wife at Athwana family. The place we arrested him was at Gikuune and Athwana location. Gikuune is within Athwana location. Gikuune is a Sub location.”
19. When put on his defence, the accused DW1 Charles Kiranki M’Inoti, the accused testified that, “I come from Kabui village, Tigania East Meru County. I am used to work as a farmer. I know the charge before the court. Joseph Kalawa M’Inoti is the deceased. He is my brother on 13/11/2018 at 6:30 am in the morning, I was at home. I was alone. I am married but the children are at boarding. My wife was not there. She was at her place, at parent’s home. I heard screams from where the Tea bushes belonging to Joshua Mukindia. I went to the place where the screams were coming from. I found a lot of people who had got there. They were many people. They were at the place where the body was. I saw the body. I saw it was my brother. I was shocked. My brother was a farmer like me. He used to have tea bushes. I had seen him last on 12/11/2018 alive during the day the previous day. I had seen him at the work in his tea bushes. Witnesses testified before the court 8 prosecution witness. None of the witnesses said he saw me killing the accused. They only heard screams as I did. We never had any dispute of disagreement with the deceased. I had no reason to kill my brother. I know of the story between Cain and Abel. I am the older brother. We do not have any shamba dispute or any other disagreement.”
20. On cross examination, he stated that, “The prosecution witnesses from the same family – your family? No. PW 1 Angelica Kanario is wife to the deceased. PW2 Peter King’ali is my step-brother. PW3 Gervesio Kanaiba does not come from the area. I do not know him. PW4 Raphael Kilemia is a stepbrother from another step-mother. My father had 3 wives. [It is unusual for a brother to attend the brother’s burial?] It is not unusual. [After the killing, your house was burnt? Yes, it was burnt. [You had injuries on what date?] No. Why did you run away. [Did you report when your house was burnt?] I had been arrested. I did not report. [Up to today you have not reported even though you were out on bond] I have not reported. [You did not attend the meeting for burial preparation] I had been arrested. [Why were you arrested] We had no grudge between us. [It is put to the witness that he had been injured the day after killing his brother and the weapon was found in his house and thereafter the



house was burnt]. It is probably Kimaita who came with the knife. PW3 had said he did not recover anything from house. [Do you live at your home?] I live at the home. There is no home there but I have put materials there and I want to build another house. I do not know who burnt the house. It is said it is the public who burnt the house. Why did the members of public burn your house? The members of the public were jealous of my development. [You did not report to the police since 2018? Why? I have not reported the matter to the police. I had been arrested so I did not attend the deceased's burial. I am the only one who was arrested. It is my house that was burnt. There are other houses at the home. It is only my house which was burnt. It is only I who was arrested and charged.”

21. On re-examination, he stated that, “Kainaba (PW3) went into my house. Raphael Mwiti (PW4) was asked by counsel whether Kanaiba recovered anything from my house, he answered in the negative. I had no injury. [Why your house was burnt?] Kainaba is the one who organized for the burning of the house. We have a disagreement with him.”
22. When questioned by the court about the disagreement, he stated that, “We do not associate well because of politics. Director of tea company. We were opposing each other as director of Micii Mikuru KTDA Factory we supported different candidates in 2000 elections to Mucii Mikuru Tea Factory.”

Analysis and Determination

23. The formulation by Etyang, J. in *R. v Nyambura & 4 Others* (2001) KLR 355, and approved by the Court of Appeal in *Antony Ndegwa Ngari v R* [2014] eKLR as to the ingredients of the offence of murder is follows:

“There are three ingredients of murder which the prosecution must prove beyond reasonable doubt so as to earn a conviction, namely:

- a. The death of the deceased, and cause of death
- b. That the accused committed the unlawful act which cause the deceased's death; and
- c. That the accused had malice aforethought.

The issue for determination in this case is whether these three ingredients of murder have been proved by the prosecution beyond reasonable doubt.”

24. There is no doubt the prosecution has been able to prove the fact and cause of death to the required standard. PW7 testified that the cause of death was head injury secondary to trauma.
25. The issue in contention is whether the said death was caused by an unlawful act of omission or commission on the part of the accused.
26. It is conceded that there was no eye witness to the offence herein, and therefore the case is wholly based on circumstantial evidence. As held in *Kariuki Karanja v R* (1986) KLR 190, 193 citing *R. v Kipkering arap Koskei* 16 EACA 135, the foundational requirements for the application of circumstantial evidence to justify a conviction are as follows:

“Circumstantial evidence to sustain a conviction must point irresistibly to the accused. 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 hypothesis than that of guilt. The burden of proving facts which justify the drawing of that inference to the exclusion of any other reasonable hypothesis of innocence is always



on the prosecution and never shifts: *Rex v. Kipkering Arap Koskei*, 16 EACA 135. An aggregation of separate facts inconclusive because they are as consistent with innocence as with guilt is not good enough evidence.”

27. On 12/11/2018, PW1 and her husband, the deceased went to the tea picking area, and she left him there and went home. She learnt the following morning that her husband had died, and she momentarily visited the scene and returned back home. The accused and his wife briefly passed by her home to convey their condolences and she was later on informed that it the accused who had committed the offence.
28. PW2 was awoken from his slumber by screams, and when he went to the scene, he found that his brother, the deceased had been killed.
29. PW3 testified that, “On 13/11/2018, at 6:00 am I heard screams from Marete’s home. I went out together with my family. We found Marete Kanana had been killed and he was laid inside tea plantation and only a leg could be seen. The deceased had a cut on the head and teeth bite marks on the right side of the face. After one day. There was a family meeting at Kanana’s family. At the meeting one Charles came having covered himself with a Boshori cap which conceals the face having only the eyes. I saw Charles coming. Charles is a brother to the deceased. When he saw his other brothers, Raphael Mwiti Gitonga, Gitaigua and Zaituri, he ran away. They asked him why he was running away. We went to the accused’s house. It had been locked. It was broken into by his brother Gitaigua and he went inside. During the search we found a knife with blood on it in the bedroom under witness. It was two roomed house. The people came. They were annoyed. They burnt the house and the cows. I took the knife to the police. Charles had at this time ran away when the saw the people. I see the knife (MF1 1). I knew Charles before the date. He is the accused. (pointing). I also knew his brother. We are in the same area.”
30. On cross examination, he stated that, “Charles came with the cap, which covers the entire face except the eyes. The deceased’s brother who were at the meeting were Raphael, Gitonga, Zaituni, Gitaigua. I and their neighbor. I know them well. Peter Kingari M’Iguti was present. It was a family meeting. I am only a neighbor. I am an in law. Zaituni is married to my step-sister. Charles came wearing the bochori. The house of the accused was burnt and his cows killed. I told the court of the injuries that I saw.”
31. PW4 testified that, “I know the accused, he is my brother. The deceased is also my brother. On 13/11/2018, I heard screams at about 6:00 am. I got up and went out near my house, there were many people. I found that my brother Joseph Kalawa had died. When I saw him I went back and stayed aside for a short time. After a few minutes the Assistant Chief Romaano Mutoria came with Police Officers. When they came, they asked people to take his body from where it is in Tea bushes and place it by the path. When they were removing the body, I saw the injuries on the body. There was injury on the back of the head. It happened to be a cut with a sharp object. There was another injury below the right-side eye. We were were all shocked, we went back home, we were with the accused. We had a meeting at my home and we tried to figure out how it happened. While we were at the meeting. Charles had covered his head and we did not know who had done the act. We departed and each went on their way. After the meeting the wife of the deceased, who is the wife to my brother –Angelica Kanuiyo- called me in the evening on the same day and she told me that her children had told her that Charles had injury on his left index finger. I slept but I informed Gitonga Stephen about the information of the injury on Charles. On the following day the Assistant Chief came with Police Officer. We went to Charles home. He was not there. We did not find him. We found the door broken, some people who saw him running away were then had saying “Ndiyo huyu Ndiyo huyu” As we followed mob came and burnt his house, cut up his miraa and cows. We did not get into the house it was the mob that went into the house. We were following him. The people entered before they burnt the house. I know one of the



- people in the mob they entered into the house. Grevesio was one of them. The people surrounded the house and later burnt house.”
32. On cross examination, he stated that, “The family meeting before the body was taken. It before the body was taken by Police in the morning. I was at the meeting Charles was also at the meeting. He was wearing a coat with cap. It is the jacket which had a blood. He was not wearing a cap which covered everywhere except the eyes. Assistant Chief came with Police Officers. Charles was not there at home. The meeting was on the previous day before we went looking out for him. I did not see Charles running away. I went with Assistant Chief and found the door locked. We heard people saying Charles had been seen running away. We went after him. We did not enter the house.” PW6 was with the deceased, PW5 and Eric at the Tea Buying Center on 13/11/2018. When all the tea had been weighed and taken to the factory, he and the deceased left the center at about 2.00 a.m and parted ways for their respective homes. He learnt about the deceased death in the morning at 9. 00 a.m.
 33. PW8 visited the scene with OCS Mikinduri Chief Inspector Charles Mwangi and APC James Saitoti. On observing the body, it had a deep cut wound on the back side of the head and visible human bite on the right side of the cheeks. After recovery of the weapon, the suspect who was present disappeared into a nearby bush to an unknown destination. They were informed that the accused had been seen within Kikurune area of Kathwana Location, and they proceeded there where they found him hiding on top of a mango tree. After effecting the arrest, he noted that the accused had some scars on the face and on both hands and his defence, the accused said he had sustained the injuries while fencing his parcel of land at Kabui village using barbed wire.
 34. On cross examination, he stated that, “I got the knife from the area Chief together with some elders after it was recovered by members of the public. I was informed that it was recovered under mattress of the suspect’s bed. There was a blood sample taken. The knife had no blood stains and it had already been tampered with by members of the public. The sample was disposed.”
 35. The accused was seen by PW3 and PW4 at a family meeting after the fact of the murder, wearing a coat and covering his head with a boshori. Although PW4 was not present when the accused’s house was broken into, he knew PW3 was one of the people who had gone inside. PW3 was categorical that he was among the people who entered in the accused house where they recovered the blood-stained knife under the mattress, which was subsequently produced by PW8 as Pex. 1. The accused then went into hiding until his arrest on 15/11/2018 from a mango tree. The chain of events from when the accused was seen at the family meeting to when he was spotted by some people fleeing from his house and chased by PW4 and others was not broken.
 36. Taking into consideration the totality of the evidence, the court finds that there is sufficient and cogent evidence that irresistibly points to the accused as the only person who committed the offence, which is inconsistent with his innocence and inexplicable on any other hypothesis other than that of his guilt. PW1, PW5 and PW6 all affirmed that they were with the deceased some minutes before the fact and he had no injuries whatsoever.

Identity of the assailant

37. Whilst it is clear that the incident took place in the wee hours of the night, the evidence on identification by recognition was led by the accused close relatives to wit PW1, PW2 and PW4, thus shredding any possibility of mistaken identity.



The Defence

38. In his sworn defence, the accused denied either having any motive to kill his brother, the deceased, or actually killing him. He was hell-bent that he had stayed at his home alone on the material day, when he heard screams like everybody else and decided to go and find out the reason thereof. He also denied having any disagreement with his brother.
39. While most of the prosecution witnesses were relatives of both the accused and the deceased and may thus have been tempted to exaggerate or lie, PW4 was not in any way related to the parties herein and he had no such motivation.
40. The court finds that the accused defence did not raise any reasonable doubt as to dislodge the overwhelming prosecution evidence.

Malice aforethought

41. The next issue is whether there was malice afterthought, which is defined under Section 206 of the *Penal Code* as follows:

- “206. 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.”

42. The Prosecution has a duty to prove malice aforethought on any of the circumstances stated under section 206 of the *Penal Code*. What can be deduced from section 206 is that malice aforethought can be either direct or indirect, depending on the facts of each case, a position has been discussed by the Court of Appeal in *Bonaya Tutu Ipu & another v Republic* [2015] eKLR as follows:

“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of *Chesakit V. Uganda*, CR. APP. NO. 95 OF 2004, the Court of Appeal of Uganda stated that in determining in 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. Earlier in *Rex V. Tubere S/*



O Ochen (1945) 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue:

It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick...”

43. PW7 testified that the body of the deceased had deep cut wounds at the top of the head to the back of the head and deep bruises on the face and upper jawbone. The manner in which the accused inflicted those injuries on the deceased is proof that he had knowledge, as required by section 206 (b) of the *Penal Code*, that his actions would probably cause the death or grievous harm to the deceased.
44. This court finds that the prosecution proved beyond reasonable doubt that the accused, deliberately, without any lawful excuse and with malice aforethought, murdered the deceased.

Orders

45. Accordingly, for the reasons set out above, the Court finds that the accused, Charles Kiranki M’Imuti, is guilty of the offence of murder contrary section 203 as read with 204 and, accordingly, convicts him.
46. Mitigation and sentencing proceedings shall be taken on a date to be fixed in consultation with Counsel for the Accused and the DPP.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Masila for DPP.

Mr. Omari Advocate for accused.

