



**Republic v Kadima alias Erick Kambaye Katalayi alias Eulogie Christian Baledi Kadima  
(Criminal Case E002 of 2021) [2025] KEHC 4042 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4042 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE E002 OF 2021  
FR OLEL, J  
MARCH 27, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CHRISTIAN BALEDI KADIMA ALIAS ERICK KAMBAYE KATALAYI ALIAS  
EULOGUE CHRISTIAN BALEDI KADIMA ..... ACCUSED**

**JUDGMENT**

**A. Introduction**

1. Christian Baledi Kadima, Alias Eric Kambaye Katalayi the accused herein is charged with the offence of Murder Contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) laws of Kenya. The particulars of the offence were that on 7<sup>th</sup> January 2021 at Syokimau Ferndale Court, in Athi River sub county within Machakos County, murdered one Elizabeth Koki Musyoki.
2. The accused person was arraigned before court on 25.01.2021 and eventually took plead on 09.02.2021. He pleaded not guilty to the charge faced.

**B. Evidence**

3. PW1 Grace Ndanu Kioko, testified that she had been the deceased house help from around June 2020 to 07.01.2021 and acknowledged that the accused herein was the deceased boyfriend. On 07.01.2021, the accused dropped the deceased at home and she indicated that she was not feeling well. The following morning, PW1 stated that she woke up at around 5.40 am to prepare the child for school. The child then insisted on seeing his mother before going to school and entered the master bedroom to say goodbye.
4. The deceased child tried to wake her up but she was non responsive. PW1 realized that something was amiss and quickly intervened assuring the child that all was well and that he would find his mother



- awake, when he arrives back home from school later in the day. She thereafter escorted the child to pick the school bus and rushed back to check on the deceased. When she entered the bedroom, she discovered that the deceased was covered with two pillow cases and was still unresponsive.
5. She waited for the accused to arrive at 8.00 am as had been his routine, but he failed to show up on this material day. she then called deceased's sister Agnes and her mother, who advised her to contact one of their neighbour, whose name she could not recall. The said neighbour also came and confirmed that unfortunately her boss had passed on. She was lying facing upward and her face covered by two pillows', one of which was blood stained. Word by then had spread within the estate and other neighbours too joined them at the scene of crime.
  6. PW1 further clarified that on the 07.01.2021, during the morning hours, the accused had dropped the deceased at home and on arrival, the deceased had mentioned to her (PW1) that she was feeling unwell.
  7. Later in the evening the accused person came back to check on his fiancée and went directly to the bedroom where the deceased was and locked the bedroom door behind him. During his stay therein she had noise from the room but concentrated on her house chores. After a while the accused herein called her severally which was strange and directed her to close the gate, which she did as he drove off.
  8. On the material night, after the accused person had left, they did not bother to disturb the deceased and did not check on her until the following morning, when they discovered the tragedy. PW1 was also certain that the last person, who was with the deceased was the accused person as no third party had accessed the house during the material night.
  9. Upon Cross examination, PW1 confirmed that She knew the accused person as the deceased Nigerian boyfriend and again confirmed that he would visit the deceased, but not on daily basis. On 07-01-2021 when he came to see the deceased, he went upstairs to the bedroom and locked the door. The bedroom was located, right on top of the kitchen and She heard noise from the bedroom, which was common whenever the accused was around and in the company of the deceased.
  10. She further recalled that on this last visit, the accused person was wearing a black suit and white t-shirt and was not aware if he subsequently changed his cloths before arrest. PW1 also confirmed that the accused person had a good relationship with the deceased children and looked troubled and/or was breathing heavily as he left the house on the material night.
  11. Further, on the following morning she had called a neighbour and they had tried waking up the deceased in vain. She saw blood oozing from the deceased mouth and it had spilt on the floor and window. She further confirmed that she did not witness the accused kill the deceased, but the movements she heard on the previous night were like for people running. she could not tell if the couple were making love or were fighting, but What she was certain of, was that it was the accused person who had killed the deceased.
  12. PW2 Edwin Khamasi Esasa, stated that he used to work as a bouncer at Forty Forty Lounge in Westland's where he met the accused person and later, moved to Onyx Lounge situated along Ngong Road. The accused person would frequent club Onyx, while accompanied by the deceased herein and her sister known as Agnes. On each visit, he would call on him to keep an eye on them throughout the night as they enjoyed the evening and made merry. This business relationship went on from July 2020 to December 2020.
  13. On 07.01.2021, the accused called him at about 11.00pm, requesting for help. He informed him that his girlfriend had seen messages on his mobile phone and raised issues over the same, forcing him to push her to the wall. They agreed to meet at Onyx club, where on arrival, he met the Congolese DJ Alex (PW11) who gave him Kshs. 55,000/=, on instructions from the accused person.



14. PW2 suggested to the accused that they proceed to the girlfriend's house to check on her. Initially, he agreed but while enroute, the accused changed his mind and decided that he would spend the night at a friend's house within Kinoo area. They drove to Kinoo but unfortunately could not trace his friend nor could they reach him on phone.
15. They looked for a room, where the accused could spend the night and eventually at about 1.00 am found a guesthouse within Uthiru shopping center, charging Kshs 1000/= per night. The accused was in need of a drink, and requested him to go buy him whisky, which he did and then excused himself to go rest.
16. The following morning, he joined the accused person at about 10.00 am and found him already freshened up. He enquired on the condition of his girlfriend and the accused informed him that her relatives had rushed her to hospital but she was still unconscious. They then used an uber taxi to town and went to a certain restaurant where the accused bought lunch and were later joined by DJ Alex (PW11).
17. The accused and PW11 engaged in a long conversation in Congolese language, which he could not decipher and eventually requested him to send the money that had been given by the DJ back to the said DJ as he was going to organize for him a visa by 3.00 pm. The accused then called for another uber taxi which they used to go back to Uthiru to pick up the accused belongings, which he had left at the guest house.
18. On the way to Uthiru, he requested the accused to give him the phone number of Agnes, the deceased sister, but he brushed him off. They returned back to town at around 2.00 p.m. and waited for PW11 until at about 4.30 pm. when he joined them, and informed them that the visa was not ready but promised it would be out in another thirty minutes.
19. PW2 at this point asked the accused, to excuse him so that he could return to his house to freshen up for work. The accused gave him his house keys, the car keys as well as the phone contact for Agnes (PW4), with specific instructions that he should hand over the deceased motor vehicle to PW4 on the following day, which was on a Saturday.
20. He did not understand why the accused was processing a visa and decided to hand over the items to PW4 on the same evening instead of Saturday as advised, which was on the following day. He called PW4 and briefed her on his assignment, after which he requested her to come for the deceased car at club Onyx club. During their conversation, PW4 did not disclose any details as to what had befallen her sister and only enquired as to the whereabouts of the accused person. He informed her that he was still in town.
21. PW2 further testified that he called a friend known as Geoffrey Nyakundi to accompany him as he handed over the car at Onyx club. They passed by Galana Plaza to check on PW11 who informed him that he had left the accused in town, where he had booked a room for the night. PW11 refused to take possession of the vehicle and they thereafter decided to drive to Onyx club and hand it over to PW4 as earlier arranged.
22. Upon arrival at the basement of the building housing club Onyx, his friend Geoffrey Nyakundi who was driving noticed DCI officers. He freaked out and as a result, hit the said motor vehicle on a wall. Armed police officers ordered them to lie on the floor and after arrest were informed that the accused was suspected to have committed murder and was on the run.
23. The police officers demanded to know the whereabouts of the accused person. He led them to B-Club based at Galana Plaza, where PW11 was at work/on the deck. He too was arrested and they were herded



- to Nairobi central police station. From there, PW11 lead the police to the hotel where the accused person had booked a room for the night and he too was arrested while in the company of another woman.
24. They were all escorted to Mlolongo police station where they spent the night and on the following day recorded their statements. He identified a photograph of motor vehicle registration KCQ 999K Volkswagen Tiguan as the car he was to hand over to PW4.
  25. Upon cross examination, PW2 acknowledged that his recorded witness statement had some errors. He had met the accused person in 2018 and not 2013 and in addition, he was arrested on 08.01.2021 not 18.01.2021 as indicted on the recorded statement. PW2 clarified that these were clerical errors made by the police officer who recorded his statement. He also affirmed that the accused had instructed him to hand over the car to PW4 on 09.01.2021.
  26. He further confirmed that the accused had two mobile phones. On the material night of 08.01.2021, the accused had given him his SIM card to throw away but he had refused. This occurred while they had stopped along the Southern by pass road after the accused had changed his mind and decided against going back to the deceased house.
  27. Later at uthuru, the accused person proceeded to throw away both his SIM cards. PW2 also clarified that PW11 had given him Kshs 55,000/= on instructions of the accused person and was not aware if PW11 had recanted his statement on this issue.
  28. Upon re-examination, PW2 affirmed that he met the accused person in the year 2018 and he had engaged him to offer him security services. Both of them were arrested on 08.01.2021 and it was the accused who had given him instruction to hand over the car to PW4. He reiterated that on 07.01.2021, the accused person had handed him his phone and instructed him to throw away the phone SIM card but he had declined to do so.
  29. PW3 Ann Njoki Ngugi testified that she was introduced to the accused herein by her friend, Hellen in May 2018 and they started chatting via whatsapp, exchanging messages and pictures. They eventually planned and meet face to face and on December 31<sup>st</sup> 2020 met at club Onyx. At that time the accused was in the company of a certain lady, while she was also with her group of friends.
  30. On 01.01.2021 the accused called her and requested if they could meet at Club Quiver along Thika Road. Eventually, on 07.01.2021, they met around 6.30 pm and hung out until about 9.30 pm, when they left due to the ongoing Covid-enforced curfew. He dropped her near her residence within Zimmerman Estate and later when she called him, he informed her that he had been involved in a road accident, having hit a pedestrian and was worried about traffic police pursuing him.
  31. The following day, which was on the 08.01.2021, she travelled to Muranga for other engagements and later in the day at about 3.00 pm, the accused person called her and requested if they could meet. She left Muranga town for Nairobi and met the accused person at about 5.30 pm somewhere around Moi Avenue. He was then with a friend whom he introduced as DJ Oscar (PW11).
  32. He informed her that he was planning to travel to Uganda the following day at 6.00 am and that his friend (PW11) had bought him a bus ticket, which bore the name Eric Kambaye. They decided to spend the night together and book a lodging where they would sleep before he travelled as planned.
  33. PW3, was shown the bus ticket No 4912950 under the name Eric Kambaye, accused passport serial No A70XXX, Extension of visa pass to Uganda dated 08.01.2021, police Abstract (All marked as MFI P1-P4) and confirmed that these were the documents in the accused person possession. He had told



her that he wanted to undertake this journey in order to meet his father. Further, it was the Accused's friend (PW11), who had booked the lodging room for them at about 7.00 pm.

34. Later on the same night, PW11 knocked on their hotel room door and when the accused opened, police officers stormed in and arrested the accused person. The said police officers also informed her that the accused had murdered his girlfriend and that was why he had been arrested. She was taken to Mlolongo police station and was remanded until the following day, when she recorded her statement. She reaffirmed that all the travelling documents recovered by the police belonged to the accused person, who had the intention to travel to Uganda.
35. Upon cross examination, she confirmed that she was introduced to the accused person by her friend Hellen Nyambura, but physically met for the first time on 31.12.2020. On the said night they took several drinks and she caused a fracas at the club, leading to her ejection therefrom. When they met on 07.01.2021 they had discussed the events which occurred.
36. She further confirmed that she was present when PW11 bought the bus ticket and paid for the hotel room, but could not recall if the ticketing clerk requested for documentation before issuing the said ticket. Further, she did not physically check the accused travelling documents to confirm the details indicated thereon.
37. In re-examination, PW3 affirmed that she met the accused along Moi Avenue on 08.01.2021 and accompanied him and PW11 to the bus booking offices where PW11 purchased a bus ticket for the accused to travel to Uganda. The passport, bus ticket, police abstract were in possession of the accused at the time of his arrest.
38. PW4 Agnes Ndungwa Musyoki, the deceased's sister testified that the accused herein had been the deceased's boyfriend for about a year and she had been with her sister when they first meet in 2019, while at Club Milan, situated within Westland's. The accused herein would visit the deceased severally, at Jacaranda Estate and noted that initially their relationship was blissful but later thawed and the couple would argue a lot.
39. On the 08.01.2021 she was at her residence preparing for work, when she received a distress call from the deceased's house manager (PW1) urging her to rush to her deceased sister's house in syokimau as her sister was unwell and need to be urgently taken to the hospital. Upon arrival, she found her sister lying on the bed face upwards, motionless. She alerted neighbours who informed her that her sister had passed on and the place was now a crime scene, hence she did not touch anything.
40. The police officers alerted came and processes the scene, before ferrying the body to the morgue in her presence. Later in the evening, while at the deceased's house, she received a call from Edwin (PW2) who wanted her to pick up the deceased car. She then alerted the DCIO who advised her to play along and eventually had PW2 apprehended. Again later that night, she was informed that the accused herein had been arrested and on the following day we went to DCI Mlolongo to record her statement.
41. Upon Cross examination by the accused, PW4 confirmed that she had held discussions with her late sister and she had assured her that she felt safe in the accused's company. She further confirmed that she had meet the accused at the deceased's office on 07.01.2021 and he had informed her that the deceased was down with a cold. They later shopped for the deceased's children.
42. PW4 further affirmed that the accused person had moved into the deceased's house at Jacaranda Estate in April 2020 and later proposed to her in November 2020, while they were on vacation in Mombasa. Later the deceased confided in her that she was worried about how their family would react to the marriage proposal and also disclosed to her that her estranged husband, the father to her children was



- livid about her relationship with the accused, and had sent her messages threatening to take the children away from her. She advised her sister to ignore such messages
43. PW4 was later recalled on 02.09.2022 for further cross-examination by the accused counsel. She further testified that on arrival at the deceased's house, she touched her body and realized that she was cold and had already passed on. She talked to PW1, who confirmed to her that the accused had visited them the previous night and had left the deceased in that state, before taking off with the deceased car.
  44. The couple, were not living together but were spending a lot of time together as girlfriend and boyfriend. The relationship was harmonious but they would sometimes quarrel. PW4 also pointed out to an occasion when the accused beat up the deceased around September 2020, which incident the deceased did not report to her parents. Thereafter, they had reconciled and later got engaged.
  45. Upon re-examination, PW4 opined that the quarrels the couple had were normal, like those which would occur in any normal relationship and that after the assault incident In September, the deceased went to live in Syokimau at their father's house, with her maid and her two children.
  46. PW 5 Dr. Johansen Odour, the pathologist confirmed that he performed the post-mortem on the deceased on 12.01.2021 at Montezuma Mortuary and her body was identified by Daniel Musyoki Nzuki, and Agnes Musyoki the deceased father and sister respectively. He was given a history that the deceased had been involved in a scuffle with her boyfriend at her house in Syokimau, Athi River on 07.01.2021 between 9.30 p.m. and 10.00 p.m. and was discovered unresponsive by her house help on the following day at 10.30 a.m.
  47. The deceased was dressed in a pink underwear and wore beads around the waist. On physical examination, he observed that she had good nutritional status, had a tattoo on the left side of her chest and had bruises on the upper and lower limbs on the left side, bruises on her right shoulders measuring 4x1 cm and also a bruise on the left side of her tongue. The deceased eyes were also congested.
  48. He further observed that the deceased had small spots of bleeding both on the upper and lower lips and inside her cheeks, which resulted in dried blood on her left cheek. She also had a linear abrasion on the right side of the neck which looked like it was caused by fingernails. There was cyanosis – the bluish colouration of the lips, the fingernails and the tips of the fingers, which was a sign of lack of oxygen circulation. In addition, he stated that there was fixed lividity meaning the setting of blood thighs gravity.
  49. Internal examination revealed widespread small spots of blood on the surface of the lung which were congested on both sides. On the neck, he observed bleeding on the thyroid cartilage on the left side. There were also spots of blood on the surface of the heart. Finally, on the scalp, the brain was congested and had blood spots. PW5 also indicated that he did not see any defensive injuries on the upper limbs and the deceased other internal organs were normal.
  50. He formed an opinion that the late Elizabeth Koki died due to asphyxia most likely caused by suffocation and pressure to the chest. He took the samples of her blood, bile fluid, stomach and its content, a portion of the liver, one kidney and her fingernail extension, which he handed over to the investigating officer for purposes of toxicology and DNA analysis.
  51. PW5 referred to various photographs taken during the post-mortem exercise and confirmed that the same were taken under his directions. He also confirmed that he signed and stamped the post-mortem report.
  52. Upon Cross-examination, PW5 confirmed that photo marked MFI 5(b) showed that there are marks on the deceased neck and alluded to the fact that the more the body stays preserved after death,



the clearer the bruises appears and that could explain why the bruises did not appear at the initial Photograph's of the deceased. He also confirmed that part from injuries set out in his report, he did not find any other injuries on the deceased head.

53. In his opinion, the cause of death was not caused by erotic asphyxiation, which can cause lack of oxygen. He explained to the court that during sexual encounters, some people may feel sexual satisfaction due to low oxygen in the body. In extreme cases, it can cause death.
54. Upon re-examination, PW5 stated that from his observation, the deceased was suffocated by someone pressing her mouth and nose so that she could not breathe. Pressure noted on the deceased chest was also not related to erotic asphyxiation.
55. PW.6, CIP Hamisi Chiatsi (RTD) formally in-charge Syokimau police post testified that on 08.01.2021 at about 8.00 a.m. he was at his office when a member of the public called and informed him that a murder incident had occurred within Ferndale Court, Parliament Phase 2 Estate. He immediately rushed to the scene and found PW1, who led him upstairs where he found the deceased lying on her bed. He immediately secured the scene and called the DCI officers based at Mlolongo police station. He called Inspector Joel Juma the Deputy DCIO of Mlolongo Police Station, IP Kilee O.C. Crime Mlolongo police station, and the scenes of crime officers from DCI – Jomo Kenyatta International airport.
56. At about 10- 10.30 a.m. the DCI team, including Mr. Kilee – OC Crime arrived at the scene. He introduced them to PW1 who led them upstairs where the deceased was lying on the bed. and had been covered with a bedsheet which they unfurled and further observed that she was not clothed and only had her inner pant. Blood had also oozed from her mouth and nose and there was Cottonwool within her right nostril. They also observed bloodstains on the floor beside the bed.
57. Upon turning the deceased body, they observed that blood had dripped from the deceased nose and mouth towards the back of the head thereby staining her bed sheet. The scene of crime officer took photos of the scene and after processing the scene, they took the deceased body to Montezuma Mortuary, Nairobi for preservation. He later learnt from his colleagues investigating that matter that the suspect had driven off with the deceased car registration Number KCQ 999K, which was black in colour and he had later been arrested in Nairobi.
58. PW6 confirmed that he did not know the accuse person, but was informed by PW1 that he was the fiancée of the deceased. He was also the first police officer to arrive at the incident scene and found the deceased covered upto the forehead. He identified the following photographs:
  1. 1a – The main gate of the house where the deceased was living.
  2. 1b - the front of the house where the deceased was staying
  3. 2c – showing a bed sheet covering the deceased with 2 pillows
  4. 2d – deceased covered with the bed sheet.
  5. 2e – showing blood stains on the floor between the bed and the wall.
  6. 3a – the body after removing the bed sheet
  7. 3d – deceased body after we turned her showing bruises on the neck.
  8. 3e – the upper body showing the blood oozing from the nose and the mouth.
  9. 4b – Bed showing blood on the sheets after removal of the deceased



59. Upon Cross-examination, PW6 confirmed that when he arrived at the scene, there were members of the public outside the premises, while PW1 was inside the house with the deceased two young children. Further, PW1 had confided in him that the accused person had spent the night at their house and left in the morning, but did not mention if any scuffle had occurred between the couple, while the accused was visiting.
60. The accused counsel also asked PW6 to look at photo 3(g) and he confirmed that the bruises on the deceased body were not visible in the said photograph, but he further clarified that, when he physically viewed the body, he saw bruises on the deceased neck.
61. On re-examination, PW6 confirmed that after turning the deceased body, he saw that blood oozing from her nostrils and mouth towards the back of her head. He further affirmed that he saw bruises on the deceased neck.
62. PW.7 Catherine Wambui Waititu testified that she was a freelance make-up artist and had dated the accused for about two (2) years from the end of 2017 till October 2019. They had met through an online dating platform, chatted for a while, before they eventually met in December 2017. The accused person introduced himself as Cristian Euloge Kadima, originally from South Africa where his mother and siblings were based, while his father was based in Congo working for the United Nations. On several occasions she had witnessed the accused video call his mother and engage in long chats with her. At one point, she also meet one of the accused siblings, while he was visiting Kenya.
63. During their courtship, the accused had confided and narrated to her about an incident concerning him, that had occurred in South Africa. He had been falsely accused of domestic violence and his lawyer had advised him to leave South Africa for a while as they sort out the issue and that is why he came to Kenya. He had insisted that the South African lady had harmed herself and was trying to wrongfully implicate him. He thus had to lie low for a while as the complaint was being sorted out.
64. Further, as their relationship developed, the accused person moved into her house and they cohabited for two (2) years, during which time they had a rollercoaster of a relationship due to casual flings the accused had with other women, though he constantly denied doing any wrong. She recalled one occasion, they were from a party and argued over his infidelity, when he got mad and threw a drinking glass at her. She sustained injuring and had to seek medical treatment, which included up stitching up her wounds.
65. On another occasion, she had allowed the accused person to use her laptop, and once done, he forgot to close his social media page. She saw the names of other ladies he was dating namely; Rosemary, Fiona, and Sarah. The final incident that broke the camel's back was when he again assaulted her and, in the process, twisted and fractured her finger. That was how she ended their relationship.
66. About a year after their separation, sometime in 2020, she got a direct message on Instagram from the deceased who introduced herself and asked her about the accused history regarding gender violence. They openly discussed this issue at length and She gave the deceased all the information she had about the accused and her experience with him as well.
67. The deceased had also confided in her that they just had a big fight with the accused, who threw her phone outside their car window and had proceeded to assault her. As a result, the deceased told her that she was minded to report this incident to the police but was not sure if she pressed on with the said charges.
68. Later they organized and had a meeting with the deceased, where again they discussed the accused behavior at length and she advised her to quit the said relationship. That was the last contact she had



- with the deceased and the next time she heard about her was when the deceased sister (PW4) called and informed her of the tragedy that had occurred.
69. Upon cross-examination, she confirmed that she had a relationship with the accused for about two years during which period he had exhibited violent behavior. She did not have Medical evidence to prove the same in court as she had left her treatment documents with the police. If allowed she could also access Instagram on her phone to enable her to prove her allegation. She also denied getting back at the accused person or harboring any grudge against him.
  70. PW.8 Mildred Veronica Ochieng Odipo, an advocate of the high court of Kenya stated that she knew and became friends with the deceased while they were students at Kenya School of Law and subsequently would visit each other and interacted frequently. she also knew some of the deceased family members and friends.
  71. She met the accused sometime in July or August 2020 when the deceased visited her while accompanied by the accused person. She recalled that on 11.09.2020, the deceased went to see her at around 7.00 p.m. and narrated to her how the accused had assaulted her, while they were together inside her vehicle. He had punched her severally and threw her phone outside the car. This forced her to jump out of the said motor vehicle and flee as she feared for her life. This incident had occurred near Fourways Junction along Kiambu Road.
  72. The following day she called their common friend, Charity Muthoni Nyaga, and together went to see the deceased at her house situated at Jacaranda Estate along Thika Road. When they got there, they found the deceased in her bedroom and was still in a lot of pain. They encouraged her to have this incident reported to the police and helped her retrace her steps to Fourways junction, where the incident took place. The deceased talked to a traffic officer, who was nearby and he advised her that the nearest police station, where they could report the Assault was at Kiambu police station.
  73. They then went to Kiambu police station where the incident was reported vide OB No. 31/12/9/2020 and after the deceased had recorded her witness statement, they went to Kiambu District Hospital where she was treated and obtained her treatment documents which she was to hand over to the investigating officer the following week.
  74. PW8 further testified that thereafter this incident, the deceased was traumatized, and decided to enroll in self-defense classes to gain skills to protect herself. Later the deceased told her that she would move to her father's house situated at Syokimau and did so in December 2020. Unfortunately, in January 2021 she received a call one night and was informed that her friend had been murdered.
  75. To her knowledge, between September and October 2020, the deceased and the accused were not an item. she further confirmed that the deceased was the one, who filed a report with the police and was given the OB reference. she had also sought treatment at Kiambu county level 5 hospital and was given her medical card but was to collect the P.3 form later.
  76. Under cross-examination, PW8 stated that she was a close friend of the deceased. She was initially married and was blessed with two children but had separated from her husband in July 2019. After the September 2020 assault incident, the deceased called her and informed her of what had transpired, and this prompted her to visit the deceased the following morning to check on how she was fairing. She further reiterated what had transpired as narrated to her by the deceased.
  77. PW.9 Oscar Onjiro Mato testified that on 08.01.2021 at 6.00 p.m. he reported on duty at Roast House Hotel and after a short while, their security guard called Isaac Monari came to the reception area while accompanied by 3 people; 2 men and a lady who sought for accommodation. The first gentleman had a hooded jacket, the lady had a red dress with weave on the head, and the third person was a brown man



- in complexion and had raster hairstyle. He accompanied and directed them to Melonia Guest House and handed over them to the Receptionist. The three guests were not persons known to him and he could not tell if they spent the night at the Melonia Guest house, where he directed them to.
78. Later that night, he was called by the receptionist of Melonia guest house and informed that one of the clients he had brought to the said guest house had been arrested by the police. He confirmed that he could only identify the with raster hairstyle and not the other two persons, who were accompanying him. He also confirmed that it was the Rasterman who had paid for the accommodation.
79. PW10 Angela Waweru testified that she was a businesswoman based in Nairobi and was engaged in running two “women-focused” organizations known as “Sisters Speak Global Ventures” and “Heels for Pads Foundation”. In May 2019 she had been contracted to “MC” an event promoting the “Games of Throne series”, and it was during this event that she first met the accused and his fiancé “the deceased herein”. They (the couple) were quite interactive in their engagements with her as the “MC” and eventually, with their permission, she ended up taking their photos and posted on her social media Instagram page.
80. One evening in June 2019, she decided to go relax at Mercury lounge-Westland’s and again bumped into the accused herein. He told her that he was a fitness instructor and requested if he could train her and in exchange, she would help him digitally market his services, given that she was a social influencer. She joined “Smart Gym” at the Junction Mall, where they trained together for a couple of months, and during this period, influenced about fifteen (15) or so other clients to join the said gym.
81. As part of the gym training sessions, they would organize outdoor excursions/training sessions at different social facilities and she recalled that at one point as a team, they organized and went for training at “Ole Polo’s restaurant” situated in Kajiado, after which they enjoyed “Nyama choma” and Alcohol drinks. Later in 2019, she travelled to the United Kingdom and later came back but did not resume the gym routine due to the COVID-19 pandemic outbreak.
82. In March 2020 a lady known as, “Marinda Jacobs” slid into her Instagram message, and informed her that she wanted to share a story/history concerning the accused, whom she referred to as “Christian Baledi”, and not “Christian Kadima” as she knew him. She shared with her links and Newspaper Articles reporting that the accused had assaulted her while in South Africa and had a warrant of Arrest issued against him.
83. She further told PW10, that she had seen her Instagram photos, where she had tagged the accused, and that is how she had traced her. The said “Miranda Jacobs”, further told her that the accused had grievously assaulted her at a party in South Africa and as a result, she had been hospitalized. She wanted help to find a way to enforce the warrants of arrest issued against him within this jurisdiction.
84. Shocked and alarmed by the new information, she opted to inform her friends, whom she had influenced to join the gym but did not confront the accused person with the new information received. She further stopped going to the said gym and blocked his calls and his access to her social media pages.
85. In September 2020, she was at her friend’s place, when she got a message on Instagram. It was the deceased who had sent the message and had attached two photographs showing injuries to her forehead. She explained that the accused had assaulted her and thrown her phone out of a moving car. She asked her why she was giving her this information, and the deceased disclosed that the accused had told her that she( PW 10) was interested in having an affair with him, but he had turned her down and that is why she had got into a smear campaign to malign his name using the south African story.
86. PW10 further testified that she decided to link the deceased with the South African lady, Marinda and they created a WhatsApp group to help the two ladies communicate directly as they pursue means of



getting justice. she last communicated with the deceased in November 2020 and in January 2021 was called by her friend, “Brian” who told her to check her WhatsApp messages. On checking, she found a “Twitter link”, forwarded by the said Brian, which was breaking the sad news that, “Elizabeth Koki” had been murdered by her boyfriend, the accused herein

87. Brian too was in their gym group and they all knew that the deceased and the accused were in a relationship. PW10 also reaffirmed that the deceased had told her that she had suffered physical violence at the hands of the accused herein. She identified the accused in court as the same person, Miranda had complained about.
88. Under cross-examination, she again affirmed that she knew that the deceased was in a relationship with the accused person but did not have the call logs in court to prove her communications with, “Miranda” and/or the deceased. She also further affirmed that she did not have any ill motive against the accused and had also not seen the warrants of arrest issued by the courts in South Africa against him.
89. PW10 further confirmed that she had made screenshots of her conversations with the deceased and handed over the same to the DCI officers investigating this murder case. Under reexamination, PW10 reiterated that her evidence was accurate and if granted time could extract her screenshots for the court's review. She also clarified that she never had any romantic relationship with the accused at any point of their interaction.
90. PW11 Alexander Bitama Kibagendi stated that he resided within Nairobi and worked as a “DJ” at various clubs to sustain himself. While undertaking his work, at B Club, on Galana Road and Onyx club along Ngong Road, he had met the accused and struck friendship as he was their frequent guest at the said clubs. The accused told him that he was from Congo (DRC) and spoke fluently in English and French languages. During his visits to the club, the accused would occasionally be accompanied by his wife, (the deceased herein) and also noted that the accused would also walk around with his own security team, while at the club.
91. On 07.01.2021, at about 10.00pm to 11.00pm the accused had called him and inquired where he was as he wanted to urgently meet him. He was at home and decided not to leave, but they agreed that they would meet on the following day within the central Business District. On 08.01.2021, he met the accused at a restaurant at about 11.00am and he informed him that he was looking for a house and also talked about his dreams of opening his own gym. He further intimated to PW11 that he wanted to travel to Uganda to go buy gym Equipment.
92. They were together until about 6.00pm, when they were joined by a lady, who was the accused friend and by this time he had to leave to report to work. The accused inquired if he could use his house, but he told him that was not possible as his house was a bed sitter and he had a cousin staying with him. He suggested to him that they look for an affordable room within town and eventually settled for this idea.
93. PW11, further confirmed that before he left for work, the accused booked a bus ticket to enable him travel to Uganda and, used his Mobile phone Number 0758491686 to pay for the same. At the hotel, the accused had also used the same phone Number to pay for his room.
94. Later at about 9.00pm, while at work, a waiter called him and told him that he had visitors. When he went to speak to them, they identified themselves as police officers and inquired where the accused was. They informed his manager, why they had to arrest him and he took them down town to the hotel, where he had left the accused. At the hotel, they found the accused in his room with two ladies and the police officers arrested him. At this point he was released and later recorded his statement at Mlolongo Police station, where he learnt that the accused was being held on suspicion of having a hand in the death of “Elizabeth Koki”.



95. Under cross-examination, PW11 confirmed that he and the accused were just acquaintances and did not share strong friendship bonds. The accused always walked around with his security, bought expensive Alcohol and always looked Rich. He further confirmed that the accused called him using different phone Numbers, and had instructed his bodyguard, to Mpesa him some cash. It is this Mpesa cash that the accused had used to pay for his Bus ticket and Hotel room.
96. He further confirmed that the accused would occasionally be accompanied by his wife to the club, and as a couple, they looked happy. When they met on 08.01.2021, the accused did not tell him of any personal problems or challenges he faced and acted in a normal manner. He also reaffirmed that the accused had loaded his phone through his security guard and used it to pay for his bus ticket to Uganda and his hotel room for the night.
97. PW12 Herine Akoth Kabata, testified that she was an advocate with thirteen (13) years of post-admission experience and was also a friend and classmate of the deceased. On 07.01.2021 the deceased had called her at about 12.30 pm and requested to be allowed to withdraw her money ( Kshs 110,000) saved in their, “chama”. She sounded desperate and wanted this amount to be withdrawn immediately.
98. She contacted the other officials and confirmed to the deceased that they would be able to withdraw the money the following day and wire it into her bank account. On 08.01.2021, she sent the deceased a message on her phone asking her to send her bank details but did not get any response. Later in the evening news broke out on social media that she had been killed. PW12 also confirmed that she did not know the accused person as they had not met before.
99. PW13 Chief Inspector Leyira Ligaka Mukutsi, testified that he was based at DCI Nyamira County but previously was stationed at the JKIA-DCI office handling scenes of crime duty. On 08.01.2021, while in the company of Inspector Juma, Cpr Antony Matata of DCI Mlolongo, they went to Farnale Estate with Soykimau Area, where a murder case had been reported. He had been detailed to take the scene of crime photos and proceeded to do so.
100. He identified the photograph’s marked as MFI 1(a)-(c), 2(a)-(e), 3(a)-(g), 4(a) –(e) which showed the deceased house, the crime scene bedroom, the deceased body, blood stained beddings and watch recovered under the bed.
101. PW13 further stated that he took various exhibit samples including swaps, bedding cloths, and the wristwatch, which he handed over to the investigating officer for further analysis. On 12.01.2021 again in the company of the investigating officer, they went to Montezuma Funeral home where the post-mortem on the deceased body was to be carried out and proceeded to take photographs of the entire process. He identified the said photograph’s as MFI 5(a)-(f), 6(a)-(e), 7(a)-(f), 8(a)-(k).
102. Finally, on 13.01.2021 he was again assigned the duty to go photograph the deceased recovered car at Mlolongo police station. He proceeded to the said police station and photographed the said motor vehicle from all angles. He marked the said photographs as MFI 9(a)- (i).
103. On 26.01.2021 he prepared his report and signed the same. He produced the bundle of photograph’s marked for the three scene’s photographed as Exhibit 6 and his certificate and Report as Exhibit 8. Under cross examination, PW13 confirmed that he was a gazette scenes of crime officer and that the photographs marked as MFI 4(a) – (b) did not show any blue clothing.
104. PW14 PC Antony Matete, stated that he was formerly attached to DCI office Mlolongo police station, but had opted to retire and currently was running his own business. He recalled on 08.01.2021 he was on stand-by duties with other colleagues at the station, when their boss one Mr. Muthui called them



- and informed them of a murder incident that had occurred at Ferndale estate off Parliament Road, with Syokimau.
105. When they arrived at the scene, they found Chief Inspector Hamisi from syokimau police station and other neighbours milling around. They also met PW1, whom they briefly interrogated before proceeding to the upstairs bedroom, where the deceased body lay. She told them that the deceased had come home the previous day accompanied by her boyfriend, the accused person herein and after a while he had left, but came back at about 9.00pm.
  106. The deceased and the accused person herein then got engaged in a fight as they were screaming and quarrelling within the bedroom. After a while, as the accused person was leaving the house, the deceased called on PW1 twice requesting her to close the door before the accused could leave, but he managed to leave and drove off using the deceased motor vehicle registration Number KCQ 999K-VW Tiquan. Thereafter PW1 closed the door and later went to bed without checking on her employer.
  107. The following morning, PW1 prepared the deceased son for school and he then decided to go to the mum's bedroom to bid her goodbye before going to school. Both the child and PW1 noticed that the deceased was non-responsive but to avoid alarming the child, PW1 consoled the child assuring him that all was well and took him to board the school bus. She rushed back to reconfirm her employers' condition and her worst fears were confirmed. She called the deceased mother, who in turn called a neighbour known as Mr Mutua to rush and see what interventions could be taken.
  108. At this point it was confirmed that PW1 employer had already passed on and the police were called in to take over the investigations. PW14 confirmed that when they entered the bedroom, they found the deceased lying facing up covered with a blanket and pillow to the face, which was blood-stained. They processed the scene and transferred the deceased body to Montezuma Funeral Home.
  109. PW14 further testified that on 08.01.2021 the deceased sister Agnes Kilonzo (PW4) received a call from Edwin Esasa Khamisi (PW2), who informed her that the accused person had handed over the deceased motor vehicle to him and requested her to come to Marsabit Plaza, along Ngong road so that he could hand over the said motor vehicle to her.
  110. He accompanied the said Agnes Kilonzo to Marsabit Plaza, where he met PW2 and one Geoffrey Nyakundi and proceeded to arrested both of them. Upon interrogation PW2 confirmed that the accused had handed over the said motor vehicle to him and he had left the accused person with his friend known as DJ Alexandria (PW11). PW2 further informed them that PW11 worked at B Club situated at Galana Plaza.
  111. On the same night, they went to B Club and arrested PW11, who in turn took them to Melonia Guest House (Room 204), where he had booked a room for the accused. They fronted the hotel manager and he requested the accused person to open his door, after which and proceed to arrest him. At the time of the said arrest, the accused person was with one Ann Njoki Ngugi (PW3).
  112. They proceeded to search the hotel room and found the accused person in possession of the following items;
    - a. A one-way bus ticket No 49112950, for Nairobi -Kampala route (seat 5). He produced this receipt as Exhibit 9. The name the accused had used on the bus ticket was Erick Kabenyi.
    - b. A yellow fever vaccinating card and thereon his name was indicated as Kadima Euloge, holder of passport Number A011960051. PW14 produced this vaccination card as Exhibit 10.



- c. Police abstract reporting a lost passport issued at Central police station. It was dated 08.01.2021 under serial No 01131/21. Therein, the accused had used the names Katalayi Erick. The same was produced as Exhibit 11
  - d. A Democratic Republic of Congo passport No 132.30.A7/0018 under the names Erick Kabin Katalayi issued on 08.01.2021 and was to expire on 07.07.2021. The same had been issued from DRC Embassy in Nairobi. The said passport had a photograph of the accused person and allowed him to travel around Kenya, South Sudan, Burundi, Tanzania and Uganda. The same was produced as Exhibit 12.
  - e. Finally, also recovered was an immigration extension- visa pass, under passport No A70XXX also issued on 08.01.2021 at 14.11pm, which was produced as Exhibit 13.
113. The accused was taken to Mlolongo police station and placed under custody. On 12.01.2021 he was part of the team that attended the post mortem carried out on the deceased and the doctor ascertained that the deceased died due to Ashyxia due to pressure put on her chest. DNA samples were taken and sent for analysis. PW14 produced the Exhibit Memo form and DNA Report as Exhibit 14(a) & (b) and 16(a)&(b) respectively. A forensic Analysis of the accused person phone too was done, but no incriminating evidence was found. The same was produced as Exhibit 15.
114. They further carried out an Analysis of the Mpesa statement of Edwin Khamisi's (PW2) phone to corroborate his evidence that the accused had requested him to send money to DJ Alexandria PW11 on his mobile line 0713750088. They confirmed that PW2 was sent to PW11 Kshs 55,000/= on 07.01.2021 at 23.20hrs and the 2<sup>nd</sup> transaction of Kshs 50,000/= was effected on 08.01.2021 at 11.38 am. This was the money used to process travelling documents. The said Mpesa statement was produced as Exhibit 17.
115. PW14 further confirmed that PW11 had told him, while recording his statement that that he had helped the accused person get travelling documents and also made the lost passport report at central police station. They had also contacted the south African police through Interpol and confirmed that the accused person was wanted in South Africa to answer to a charge of domestic violence offence.
116. They also sent a letter dated 14.01.2021 to the Interpol, which ran the accused profile. They replied to their letter vide their letter dated 19.01.2021 and indicated that, the accused was known by his South African names Christian Mwanbey Kadima, of Nigerian Nationality and was wanted in south Africa to face Assault charges. He noted that in Kenya he was known as Erick Katalayi. The DCI letter to Interpol and the response were produced as Exhibit 18(a) & (b).
117. Under cross examination, PW14 confirmed that they arrested the accused person at Melonia guest house, which was within Central business district. After the arrest, they had made an inventory of what they recovered from the deceased hotel room, but unfortunately had not carried and/or produced the same before court.
118. According to their investigation, they did not discover evidence to show that the accused made a passport renewal application on the same day, nor did he book the bus ticket. They also did not discover evidence of the accused having sent money to PW11 to process for him his travelling documents.
119. It was his further evidence that PW1 had confirmed that the deceased and the accused came back home at about 8.00 am and the accused left thereafter. He later came back that evening and the couple got engaged in a fight while in their bedroom. During the fight, the deceased had shouted to her to close the main door and after a short while, the accused had come downstairs and hurriedly left the house. She closed the main gate and door and went to sleep. She did not check on the deceased, that material night.



120. The investigation also did not reveal incriminating evidence extracted from the accused phone. He noted that the DNA samples were only collected from the deceased and not the accused. They also did not investigate who's wrist watch was discovered under the deceased bed.
121. Under reexamination, PW14 confirmed that they indeed made an inventory of what they recovered from the accused person's hotel room and listed them as follows;
- a. Huawei Mobile phone serial No 8643610310157765/90
  - b. Temporary Passport pass of DRC Congo serial No 132.3A70XXX under the name of Erick Kabinya Katalenyi dated 08.01.2021 and expiring on 07.072021.
  - c. Bus ticket for Erick Katalenyi Mobile No 0758491686 for Nairobi -Kampala route, valued at Kshs 3,700/=
  - d. Police Abstract dated 08.01.2021 reporting the loss of original DRC travelling documents of Erick Katalenyi.
  - e. Department of immigration extension of visitors pass of Erick Katalenyi Passport No A70XXX.
  - f. Black suit, black leather belt, black shoes, black leather belt and nail cutter.
  - g. Leather notebook.
  - h. Black spectacles.
122. The said inventory was signed by the accused person and witnessed by Anne Njoki (PW3) and Erick Khamisi (PW2). He also appended his signature thereto and later prepared a separate inventory for the recovered deceased motor vehicle registration Number KCQ 999K VW Tiguan and for the items recovered from the accused house at 360 Apartments within Mlolongo. PW14 also reiterated his earlier evidence that PW11 had paid for the accused person's travel documents, and it was PW2, who had forwarded this money to PW11 on the accused instruction to facilitate this process.
123. The prosecution closed their case at this juncture and the accused was placed on his defence. He opted to give sworn evidence and did not call any witness
124. DW1 Christian Beledi Kadima testified and stated that his names were Euloge Christian Kadima and he confirmed that he held dual nationality. He was born in the Democratic Republic of Congo (DRC) and was also a neutralized citizen of South Africa. He held a South African passport No A04739359 issued on 26<sup>th</sup> May 2015 and produced a copy of the same as Exhibit D1. He understood the charge he was facing and was categorical that he did not Murder the deceased.
125. He confirmed that the deceased was his fiancé and they had dated for about one year from 21.11.2019 and got formally engaged on 21.11. 2020. He was a gym instructor and owner, while the deceased ran her law firm and also engaged in Human resource consultancy. On 05.01.2021 he was with the deceased in the evening as they were driving home from work and she complained of feeling unwell. The following morning, he drove her to Gateway Mall, where she was seen by a doctor, who prescribed her medication. The Doctor also suggested that she should undergo a corona test on 08.01 2021 if she was still feeling unwell.
126. From Gateway Mall they went to his apartment at 360 Apartments along Katani Road and spent the night there. The following morning at about 7.00 am, they went to the deceased house at Ferndale Court along Parliament Road. He instructed PW1 and the deceased two sons to keep social distance



- due to his fear that the deceased may have contracted COVID-19. After settling the deceased, he left work at the gym.
127. At about 5.30 pm, PW3 called him and they agreed to meet at about 6.30 pm at Quiver Lounge along Thika Road. He was with her until about 9.30 pm, when he excused himself as he had to rush back home to find out how the deceased was fairing on, but agreed to meet later at night at Onyx's club.
  128. He rushed home and arrived at about 10.30 pm. PW1 opened the gate and he went straight upstairs to the bedroom where the deceased was resting. He found that she was relatively much better and her body temperature had tremendously reduced. They exchanged notes of the business transactions of the day and at the end kissed her goodnight and tucked her in bed. DW1 also clarified that Thursday nights were his "boy's night out" and for the deceased house, he went to his apartment to change attire.
  129. While enroute to Onyx Club, he contacted PW2 to ensure that his table was reserved for him. At the club, he was with PW3 and spent the whole night into the wee hours of the morning clubbing. He later left the club accompanied by PW3 and his bodyguard PW2, whom he dropped at Uthiru and hired a hotel within the same vicinity until the following morning. After breakfast, he dropped PW3 at the Odeon cinema area, within Nairobi CBD as she was to go for an interview in Muranga and he went about attending to his other appointments within town.
  130. DW1 further confirmed that on 08.01.2021, he did not communicate with the deceased during the day and later at about 5.30 pm, PW3 came back and joined him in town before they later proceeded to the lodging within the city. Bearly 15 minutes later, PW11 knocked on his door and asked him to open it. When he did so, several police officers barged in and arrested him. He was later taken to Mlolongo police station.
  131. Later on, the same night, while under interrogation he came to learn that he was being held on suspicion of having murdered the deceased. He categorically denied murdering Elizabeth Koki Musyoki and stated that he had no reason to do so. He further denied having a history of assaulting his former girlfriends and/or violating them in any gross manner.
  132. The accused further denied the prosecution's insinuation that he was in the process of escaping from Kenya and stated that all the documentation produced by the prosecution to prove this allegation were fabricated by the police. He also stated that his official names were "Euloge Christian Kadima" and did not know "Erick Kabaye" nor did he forge documents to present himself as such. He also denied giving PW11 any money to process for him travelling documents.
  133. The accused person also reiterated that as a couple, they never quarreled with the deceased and were still very much in love, to the extent that they shared bank account details and access to each other's bank account. After their official engagement on 21.11.2020, the deceased still wanted him to show further commitment, and they opted to engrave similar tattoos on their body as a sign of their eternal commitment to each other.
  134. He also urged the court to note that Friday nights were usually the girl's night out and the deceased and her sister would go over at B Club and enjoy themselves. He preferred to have his bodyguards watch over his girlfriend and that is why he handed over the deceased motor vehicle to PW2 to go provide the deceased with security while at the club.
  135. Finally in response to PW1's and the PW5 evidence, the accused person stated after visiting the deceased at her house on the night of 07.01.2021, he left the house at a normal pace and was not in a hurry as alleged by PW1. As regards the noise which PW1 heard in the bedroom, it was "joyful noise" and did not emanate from a fight. Dr Johnsen Odour (PW5) had also stated that the deceased was strangled, he reiterated that he had no reason to strangle her and prayed for the truth to be established.



136. He prayed that he be acquitted and be discharged of this offence.
137. Under cross examination by the Odpp counsel, the accused person confirmed that he was Eulong Christian Kadima, born in DRC Congo, but held dual nationality from South Africa and Congo. He referred the court to Exhibit D1, the scan passport copy sent by his mother to confirm this fact. He had arrived in Kenya in July 2017 and eventually started his company specializing on “physical fitness”. His company was known as, “Forever bodies” and he would be engaged by various clients to train them on physical fitness. Also due to his expertise, he would also be hired by those interested in setting up their gym to help them do so.
138. He further reiterated his earlier evidence on his movements between 06.01.2021 to 08.01.2021 when he was arrested, but denied the suggestion that he wanted to escape to Uganda even though the temporary permit (Exhibit P2) bore his photograph. He also believed that PW3 had been coerced by the police to state so. Exhibit P10 the yellow fever vaccine card was issued under his name, though the passport number on his passport (Exhibit D1) did not match with the passport number indicated on the said yellow fever card. This was because he had taken the yellow fever vaccine card earlier with his old passport.
139. PW11 evidence was not true as he did not pay for his lodge accommodation in town on the evening of 08.01.2021, nor did he help him secure any travelling documents. He affirmed that he only had his Driving license on him, when arrested at Melonia guest house and also did not sign the inventory allude to by PW14.
140. Under cross examination by the victim family advocate (Counsel Mugisha), the accused person confirmed that the last time he spoke to the deceased was on 07.01.2021 after he arrived at the club and that on the said night into 08.01.2021, he had slept at a guest house within “Uthiru town” and on 08.01.2021 in the evening was arrested at Melonia Guest house along River Road.
141. PW2 was his bodyguard but worked for him on a need basis, and therefore were not always together. He admitted leaving the deceased car under the care of PW2, but his instructions were to take it to B Club, where he was to meet the deceased and PW4 on the material night. The accused also denied PW2’s allegation that he (the accused) had told him that they had quarreled with the deceased on the night of 07.01.2021. He further explained that the discrepancy in his passport number as indicated in his Yellow fever card and his South African passport arose because he had renewed his passport.
142. The accused person was also cross examined by Counsel Mosongo watching brief for Fida(K). He confirmed that the deceased was his fiancé and they had planning to meet her parents and get married in the course of the year. They had also engraved a tattoo on each other’s body to symbolize their love for each other.
143. His Fiancée’s death had left him heartbroken and gathered from PW9’s evidence that she had bled from the nose and her lifeless body was found necked in her bedroom. He was certain that he did not leave her in that state and she was alive, a bit feverish but happy. He reiterated that he believed that the deceased had been killed, but he certainly, was not the guilty party. He also confirmed that he had a sexual relationship with Ann Njoki, which was fueled by his personal indiscretion.
144. DW1 also reiterated his movement from 06.01.2021 to 08.01 2021 when he was arrested, why he gave PW2 the deceased motor vehicle, and again instead that PW11 was untruthful in his evidence. On 07.01.2021 when he left the deceased house, he had left PW1 and the deceased two children within the said house and PW1 under the circumstances could also be a suspect to the murder.



145. Under reexamination, the accused person reiterated, that he did not have any motive or interest in killing the deceased and affirmed that he certainly did not murder her. He would also occasionally use his security/ bodyguards as and when he needed them but was not with them on all occasions. He also rejected PW11's claim to have paid for his travel documents and/or accommodation. Lastly, the accused person faulted the police for conducting shoddy investigations and ended up fixing him because he was a foreigner

### C. Parties Submissions

#### I. The Accused Submissions.

146. The Accused person submitted that the prosecution case was based on malicious prosecution domiciled on mere suspicion, that could not infer guilt on a charge, which was in variance with the evidence adduced.
147. As stated in his defence, the deceased was unwell, showing signs of strong flu/corona, and on 05.01.2021 and 06.01.2021, had nursed her and taken her to hospital. This evidence was also corroborated by PW1, who in her evidence-in-chief confirmed that on the material night, he came and visited the deceased for about 30 minutes before leaving for his residence. PW1 had also confirmed that she did witness him murder the deceased and the noise which emanated from the room on the material night could have been one caused by lovemaking.
148. PW1's evidence irrefutable pointed to the fact that he had no criminal intent during his visit to the deceased home on the material night of 07.01.2021 and thus "actus reas" or "mens rea" was not proved. The decision to charge him was therefore purely based on suspicion informed by the fact he was in the house where the deceased body was discovered. He relied Joan Chebichii Sawe Vrs Republic Criminal Appeal No 2 of 2002 to buttress this point.
149. The accused person further submitted that, "the doctrine of last seen alive" domiciled on circumstantial evidence could also not apply to the evidence presented herein, based on the superfluity of the prosecution witnesses and the rebuttal evidence/plausible defence he had laid out exonerating himself from this crime.
150. PW5, the Doctor who had conducted the post mortem had stated that the cause of death in his opinion was most likely due to "asphyxia", most likely caused by suffocation and pressure to the chest, but crucially, while under cross examination also admitted that, "cause of death cannot be suffocation". This evidence had irrefutably established that the cause of death was not proved when considered with the fact that the accused had been ailing and her illness may have also contributed to her death.
151. PW5 had also stated that during the post mortem, he discovered that there was, "a linear abrasion on the right side of the neck which looked like it was caused by fingernails". The reasonable hypothesis was that the deceased may have been strangled by a third party after he had left the house. PW5 also took the deceased fingernails extension for DNA Analysis, but the analysis of the DNA was not presented to court to resolve if he was culpable. In the same wave length, PW14 the investigating office further confirmed in his evidence that he did not investigate "whose watch" was discovered under the deceased bed and this too further created doubt as to his culpability. Reliance was placed on Paul Karanja Gitari Vrs Republic (2016) eKLR & Bukenya Vrs Uganda (1972) EA 549 to emphasis the prosecutions duty to call all vital witnesses
152. Finally, on the issue of cause of death, the accused urged the court to borrow a leaf from Siaya Criminal Case No E021 of 2021 State Vrs F.O.O, where it was stated that, "asphyxia was a mechanism of death



and not a cause of death”. He reiterated that the evidence of PW5 was inconclusive in this aspect and that the prosecution had not exhaustively satisfied the burden of proving the cause of death, as the same may have been caused by a third party and/or the deceased prior ailment bearing in mind that corona pandemic was in the offing during that period.

153. The accused further urged the court to also critically examine the evidence of PW14, the investigating officer, particularly his testimony that the deceased had called PW1 twice, requesting her to close the door, as the accused was leaving the house. This implied that the deceased was alive, as at the time he was leaving the deceased house and raised reasonable doubt to the prosecution theory that he had snuffed life out of the deceased by suffocating her.
154. Reliance was placed in the case of *Alexander Nyachiru Marube Vrs Republic* CR App No 159 of 1984 , *Bukenya vrs Uganda* (1972) EA 549, *Woolmington Vrs Dpp* (1935) AE 462, *Elizabeth Waithiegeni Gatimu Vrs Republic* (2015) eklr & *Ndungu Kimanyi Vrs Republic* (1979) KLR Where it was emphasized that where there the prosecution evidence was in doubtful, the accused was entitled to be given a benefit of doubt not as a matter of grace or concession but as a matter of right and be acquitted.
155. Finally, the accused again reiterated that the evidence presented and placed before court did not firmly establish and/or unerringly point to his guilt. He urged the court to so find and find that the prosecution had not proved their case to the required standard, thus he should be given the benefit of doubt and be acquitted.

#### **Submissions by the Victim’s family**

156. They submitted that the evidence presented by the prosecution had established the cause of death. While relying on Section 203 as read with section 204 of the *Penal Code* and the case of *Republic vs Omwenga* (2009) Eklr and *Woolmington vs DPP* (1935) AC 462, it was contended that PW5 proved the fact and cause of death, Dr. Johansen Oduor in his post mortem report had noted his findings on the deceased’s body and stated that the cause of death was asphyxia most likely from suffocation and pressure to the chest leading to pulmonary arrest secondary to strangulation.
157. It was submitted that ample evidence was adduced to show that there was an unlawful act committed by the accused, being the last person seen in the company of the accused person. PW1 & PW6 both saw the deceased body and noted that it had blood stains, blood was oozing from the mouth and nose to the back of the head. It was opined that in the normal cause events, the nature and extent of injuries suffered by the deceased do not just happen nor were they self-inflicted. They resulted from an unlawful and deliberate act of another person, who was last seen with the deceased.
158. Counsel further submitted that malice aforethought had also been established. Whilst relying on the cases of *Republic Vs Tubere S/O Ochen* 1945 12 EACA 63, *Charles Patrick Ooko Onyangi vs Republic* [2020] Eklr and *Republic vs Gundu* [2022] KEHC 427 KLR, it was further submitted that the assailant in this case aimed at starving the victim of oxygen which led to total obstruction of the airwaves leading to asphyxiation and this illegal act had caused the death of the accused.
159. It was contended that even though none of the witnesses saw the accused person strangle the deceased, circumstantial evidence adduced had proved that, the victim’s death could be directly linked to the accused as it was proven that the deceased was in good health through the evidence of the PW1 and PW4. The accused person had also testified that by the time he went back to the deceased’s house at 10.30pm, her body temperatures were down.



160. PW1 had also stated that she heard noise coming from the room even though she could not ascertain whether it was a cry for help or joyful noise. Further that after the accused person left, no one interacted with the deceased physically until the following morning, when the deceased child went to bid her goodbye before going to school.
161. In addition, it was to be noted that the accused person had further stated that on the material date when he left, the deceased was in joyful spirits yet the next day he did not call or text the deceased to check up on her and this had to be viewed with suspicion for someone who claims to be in love and to have had a good relationship with the deceased. The accused person had also admitted to cheating on the deceased with PW3 and was planning to escape to Uganda as confirmed by PW2, PW3 and PW11 in their evidence.
162. The victim's counsel also relied on the, "doctrine of last seen alive". They relied on the case of Republic vs Gundu [2022] KEHC 427 (KLR) and submitted that based on the evidence on record the accused person was the last person to be seen with the accused alive and therefore answerable. His action's after leaving the deceased house clearly showed acts of one who was guilty and he had not displaced the strong evidence linking him to the Murder. It was submitted that the prosecution had proven the case beyond reasonable doubt and urged the court to convict the accused person.
163. The ODPP did not file any Submissions in this Matter.

### **Analysis And Determination**

164. I have considered all the evidence adduced and submissions on record filed by the parties. The question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused murdered one Elizabeth Koki Musyoki the deceased herein.
165. Section 203 of the [Penal Code](#) defines the offence of murder as follows:
- “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
166. In the case of Republic v Okwara (Criminal Case E015 of 2023) [2024] KEHC 1360 (KLR) the court stated as follows;
- “Mens rea in murder causes takes the form of malice aforethought, and the elements are set out in section 206 of the [Penal Code](#). They relate to intention and knowledge. Intention to kill or cause grievous harm or to commit a felony. Knowledge that the act or omission causing death could cause such death, and being indifferent to the consequences of the act or omission. Intention and knowledge are mental elements. One forms an intention, in their mind, to do or not to do something, and has knowledge, within his mental faculties about something. So, the mental element for the offence of murder is either intention or knowledge.
- Has the prosecution adduced evidence to establish such intention or knowledge, that the accused had formed an intention to kill or cause grievous harm or to commit a felony, or knew that whatever he was doing was likely to cause death, but remained indifferent to the consequences? Well, the mens rea of an offence is usually to be inferred from conduct or action, being a mental element, unless the intention is voiced by the perpetrator.”
167. The Court of Appeal at Nyeri in Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR, summed up the elements of the offence of murder as follows: -



- i. the death of the deceased and its cause;
- ii. that the accused committed the unlawful act which caused the death of the deceased; and
- iii. that the accused had malice aforethought.

168. I will now proceed to interrogate each issue.

**(i)The death of the deceased and its cause.**

169. It is common ground that, Elizabeth Koki Musyoki, died on the night of 07.01.2021 and her body was discovered by PW1, her house manager on 08.01.2021 in the morning. she subsequently contacted PW4, the deceased sister, her mother and neighbours before the police were called in to take charge of the investigations. The accused in defence also acknowledged that indeed Elizabeth Koki Musyoki had passed on, but denied having a hand in her Murder.
170. PW5 Dr Johnsen Odour the pathologist who performed the post-mortem on the deceased body, confirmed that the deceased body was identified by Daniel Musyoki Nzuki, her father and Agnes Musyoki (PW4), her sister before he carried out the Autopsy.
171. On physical examination, PW5 observed that the deceased had good nutritional status and noted the following injuries
- a. A bruise on the left side of her tongue.
  - b. Bruises on the upper & lower limbs, which were also prominent on the left side of her body.
  - c. Bruises on her right shoulder measuring 4 x1 cm.
  - d. Small spots of bleeding on the upper and lower lips and inside her cheeks, which resulted on dried blood being left on her left cheek.
  - e. A linear Abrasion on the right side of her neck which looked like it was caused by fingernails.
  - f. There was also cyanosis-the bluish colouration of the lips, the fingernails and the tips of her fingers, which was a sign of lack of oxygen circulation.
172. Further, internal examination revealed small spots of blood on the surface of the lung, which was congested on both sides, on the neck, he observed bleeding on the thyroid cartilage on the left side and spots of blood on the surface of the heart. Finally, an examination of the scalp also unveiled congestion of the brain and it too, had blood spots. PW5 did not see any defensive injuries and also confirmed that the deceased other organs were normal.
173. Upon conclusion of this process, PW5 formed the opinion that the deceased died due to Asphyxia most likely caused by suffocation and pressure to the chest. He signed and stamped the post-mortem report which he produced into evidence. Under Re re-examination, PW5 further clarified that “the deceased was suffocated by someone pressing her mouth and nose so that she could not breathe. Pressure noted on the deceased chest was also not related to erotic Asphyxiation.”
174. The death of Elizabeth Koki Musyoki was therefore proved and its cause was due to asphyxia caused through suffocation by a third party.

**That the accused committed the unlawful act which caused the death of the deceased**

175. In this case, none of the witnesses saw the accused person strangled the deceased. The prosecution evidence was largely circumstantial as confirmed by PW1, who testified that the accused person was the



last person to be in the presence of the deceased on the night of 07.01.2021. There was commotion in the bedroom before the accused left the house in a hurry, only for them to discover her lifeless body the next morning, while covered with two pillows on her face. PW6, PW13, and PW14 all police officers who visited the scene of crime confirmed this fact.

176. The accused person in defence, denied having a hand in the murder and affirmed that he had no reason to do so. Their relationship with the deceased had blossomed to the extent that they had even officially engaged and were preparing to formalize their marriage. Further, as a commitment of their undying love for each other, they had also engrave similar tattoos on their body.

177. It was also his evidence that the noise PW1 heard from the bedroom on the material night was, a “joyful noise” and was not noise that emanated from a fight. It could also not be ruled out that a third party had gained access to the deceased house later that night and committed the murder. He therefore pleaded his innocence.

178. Proof of a fact in criminal cases can be either by direct or circumstantial evidence. When a witness asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is described as circumstantial evidence.

179. Therefore, where circumstantial evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged. In *Neema Mwandoro Ndurya v. R* [2008] eKLR, the Court of Appeal cited with approval the case of *R. vs. Taylor Weaver and Donovan* (1928) 21 Cr. App. R 20 where the court stated that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

180. The threshold to be established if a conviction is to be based on circumstantial evidence was also discussed In *Sawe –vs- Rep* [2003] KLR 364, where the Court of Appeal 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 hypotheses than that of his guilt; Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on; The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.”

181. In *Ahamad Abolfathi Mohammed and Another v Republic* [2018] e KLR, the same court further stated as follows, where reliance was placed on circumstantial evidence:

“However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: -



“It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.”

182. Finally in *Abanga Alias Onyango vs. Rep* CR. A No.32 of 1990 (UR) the same court again set out the principles to apply to determine whether the circumstantial evidence adduced in a case are sufficient to sustain a conviction. These are:

“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 none else.”

183. In summation, of the aforesaid case law, it is thus required that before any conviction based on circumstantial evidence is reached, the said evidence adduced must be adequate to prove the case to the required standard of beyond reasonable doubt. In that regard, the court will admit circumstantial evidence if it meets the following criteria;

- a. Evidence that is logically connected to the case.
- b. The evidence must prove or disapprove a fact relevant to the case.
- c. The evidence should be reliable, and trustworthy with minimal chance of falsehood.
- d. Its potential to influence a decision should not outweigh the probative value.
- e) The evidence should not be hearsay.

184. Accordingly, it would be safe to conclude that circumstantial evidence may include;

- a. Physical evidence, such as fingerprints or DNA, that connects the accused to the crime or scene of crime.
- b. Documentary evidence, for example, documentary records and text messages that support inference of guilt.
- c. Behavioral evidence includes the accused's actions that point to his guilt or involvement in the crime. Examples include running away after the offence is committed or attempting to destroy incriminating evidence.

185. PW1, PW2, PW4, PW7, PW8, and PW10, all gave affirmative and irrefutable evidence that the deceased and the accused person were involved in a romantic relationship, which had lasted for about one year and had its fair share of relationship drama. The accused person in defence also affirmed that indeed he was involved in a romantic relationship with the deceased and had planned to get married.



186. On the material day, both PW1 and the accused person himself confirmed that he had dropped the deceased back to her house situated on Ferndale Court, off Parliament Road, within Athi River after which he went to work and later that night at about 9.30 pm went back to check on the deceased as she had been unwell.
187. PW1 confirmed that once the accused person arrived at the deceased residence, he went straight up to the bedroom where the deceased was resting and locked the bedroom door behind him. During his stay therein, PW1 heard noise but continued with her chores. After a short period, the accused took off while in a hurry, and according to PW1, he “looked troubled and/or was breathing heavily.” She did not bother to disturb her boss, but on the following morning to her horror discovered her lifeless body, when her son went to bid her goodbye before going to school.
188. Under further cross-examination, PW1 confirmed that she did not witness and/or see, the accused murder the deceased but what she was certain of, was that “Yes the noise made is one made during lovemaking, yes I heard movements like people running upstairs. I did not know whether you were fighting or making love. Yes, I am certain that you killed her even though I did not see you do it.”
189. PW2 in his evidence-in-chief, confirmed that he would be hired by the accused person to provide him with security, which fact was also affirmed by PW11. On the material night, the accused person had called him at about 11.00 pm requesting for help. The accused confessed to him that, his girlfriend, the deceased herein had seen certain messages on his phone and had raised a fracas over the same, forcing him to push her to the wall.
190. They agreed to meet at Club Onyx, and on the instruction of the accused, PW11 forwarded to him Ksh 55,000/=. He suggested that they go to the deceased house to go check on her condition. While enroute, the accused person changed his mind, while they were driving along the southern bypass and decided that he would spend the night at a friend’s house in Kinoo Area. They drove to Kinoo but unfortunately could not trace the accused friend nor could they reach him on phone. They ended up going to Uthiru, where the accused spent the night at a local guest house.
191. PW2 also confirmed that while they were along the southern bypass, the accused person removed both his SIM Cards from his phone and asked him to dispose off the same but he refused. Later while at Uthiru, he saw the accused dispose off both his SIM Cards.
192. PW2 further testified that the following morning he found the accused had freshened up and they came to Nairobi CBD to meet PW11. While enroute he asked the accused about the condition of his girlfriend and he had informed him that she had been rushed to hospital by her relatives but was still unconscious. He also asked the accused to give him the phone number of PW4, the deceased sister but he brushed him off.
193. They later met PW11 at a restaurant within Nairobi CBD, and the accused engaged him (PW11) in a long conversation using Congolese language, after which the accused advised him to send back the money PW11 had been deposited in his Mpesa account the previous night. This fact was confirmed by PW14 who produced the phone analysis report of PW2’s Phone Number 0713750088. The said report confirms the Kshs 55,000/= Mpesa transaction sent by PW11 on 07.01.2021 at 23.20hrs to PW2 phone and the 2<sup>nd</sup> transaction from PW2 phone aforementioned back to PW11’s phone was effected on 08.01.2021 at 11.38 am. The said report was produced as Exhibit 18.
194. PW2 further affirmed that the accused told him that PW11 would use the money to organize for him a visa by 3.00 pm on the material day. Later in the evening, he excused himself as he had to go to work. The accused person gave him the deceased car keys, his house keys, as well as the phone contact of



- PW4, with strict instructions to make sure that he called her on the following day to come pick up the deceased car.
195. PW2, instincts got the better of him and he called PW4 on the same evening. They agreed to meet at Club Onyx, where he would hand over the deceased car to her. When he arrived at the basement of the building where Club Onyx is situated, he was arrested as PW4 had come with DCI officers, who informed him of what had transpired. He led the police to PW11 at B-club on Galana Building, and PW11 in turn led the police to Melania Guest house, where the accused was arrested and his traveling documents confiscated.
  196. PW4, PW7, PW8, and PW10 all confirmed that at various points they had had personal intimate discussions with the deceased and she had confirmed to them that the accused person at times would become violent and on one occasion had severely assaulted her, and thrown her phone out of their moving car widow. She had become so traumatized by this event that, she decided to take self-defense classes to be able to defend herself from any possible future assault.
  197. PW7 also affirmed that she had been in a relationship with the accused for a period of about two (2) years but walked out of the relationship after the accused person assaulted her and, in the process, twisted and fractured her finger.
  198. PW 10 who was a social media influence, who helped the accused gain clientele for his gym also confirmed that one, “ Miranda Jobs” had slid into her Instagram direct messages “DM”, and revealed that the accused was a fugitive, wanted by the South African police to answer to charges of Assault.
  199. Again, this fact was confirmed by PW14, who produced correspondences to Interpole dated 14.01.2021 and their response dated 19.01.2021. The same were produced as Exhibit 18(a) & (b).
  200. PW3 confirmed that PW11 bought for the accused a one-way ticket to Uganda and when he was later arrested had in his possession travelling documents. This fact too, was attested to by PW11 and PW14, who was in the team of DCI officers that arrested the accused person and found in his possession various documents to wit;
    - a. Bus ticket No 49112950 for Nairobi – Kampala route (seat 5) under the name Erick Kabenyi -Exhibit 9.
    - b) Yellow fever vaccination card under the name Kadima Euloge holder of passport No A011960051 Exhibit 10.
    - c. Police Abstract issued at Central police station Dated 08.01.2021 under the name Katalayi Erick Exhibit -11.
    - c. DRC passport No 132.30.A7/0018 issued on 08.01.2021 by DRC Embassy in Nairobi under the name Erick Kabin Katalayi. The said passport had the accused passport photo Exhibit -12.
    - c. Immigration Extension visa pass under passport No A70XXX also issued on 08.01.2021 at 14.11pm.
  201. The prosecution evidence adduced when looked at in totality leads to the inescapable conclusion that it was the accused person who was last seen with the deceased and was in the process of escaping from the country under a disguised name. He therefore could be held responsible for the death of “Elizabeth



Koki Musyoka” unless he provided cogent explanation to extricate himself from the accusation of having had a hand in her death. See the case of Stephen Haruna (Supra),

“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.”

202. The doctrine of last seen alive, which prescribes that the person last seen with the deceased before his/her death could be held responsible for his/her death unless he/she could provide any explanation as to what may have occurred that contributed to the said death.

203. In the Nigerian case of Stephen Haruna v The Attorney-General of The Federation (2010) 1 iLAW/CA/A/86/C/2009 the Court opined thus:

“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.”

204. Similarly, in the Indian case of Ramreddy Rajeshkhanna Reddy & Another v State of Andhra Pradesh, JT 2006 (4) SC 16 the court held that:

“Even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small, that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.”

205. The above proposition is supported by Sections 111(1) and 119 of the Evidence Act both of which provide as follows:

“ 111.

(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:

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecuting, whether in cross-examination or otherwise, that such circumstances or facts exist:

Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the



defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”

“119. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

206. The accused person vehemently denied having anything to do with the murder of the deceased herein and for the record stated that he was being set up simply because he was a foreigner. It was his contention that he truly and sincerely loved the deceased and to attest to this strong bond were engaged and were planning to get married. They had also made similar tattoos on their body to affirm their commitment to each other.
207. The noise PW1 heard on the said night was “joyful noise” and not one of couples fighting. He also pointed out that PW14 had in his evidence stated that the deceased called out PW1 and told her to close the door to prevent him from leaving. This implied that the deceased was alive and well as at the time he was leaving her house and must have been murdered by a third party later that night.
208. In this case, I have subjected the evidence adduced herein to intense scrutiny. PW1 evidence was strongly corroborated by PW2 evidence, which I find to be cogent and truthful. The accused confessed to PW2 that he had a disagreement with the deceased, on the said night and had ended up assaulting her. He had panicked and was unsure of what to do.
209. Despite covid lockdown/curfew, the accused and PW2 on the same night opted to drive back to the deceased house to check on her only for the accused to develop cold feet while they were enroute and the accused ended up spending the night at a guest house in Uthiru. He also conveniently disposed of both his phone SIM cards for good measure to avoid being traced.
210. The accused on the following morning also lied to PW2, that the deceased had been rescued by her relative and rushed to the hospital, but was still unconscious. He also deliberately refused to give PW2 the phone number of the deceased sister and only did so at the last minute with specific instructions that she should be called on the following day and the deceased motor vehicle be handed over to her. His actions were obviously calculated to give him headroom to escape and leave the country for Uganda.
211. PW2 and PW11 also affirmed the elaborate scheme, the accused conceived and implemented to have him immediately travel out of the country. PW14 produced various travelling documents, a yellow fever card and a police abstract recovered from the accused when arrested as Exhibit P9 to P13 herein. From the said travel documents, it is also noted that the accused had deliberately acquired a new pseudo name, “Erick Kabinya Katalanyi” and also bought a one-way bus ticket No 49112950 destined for Kampala under the said name. He was due to travel on the following morning on 09.01.2021.
212. By this evidence, the prosecution unequivocally proved that the accused had engaged the “flight mode” gear and was running away from his indiscretions. This “behavioural evidence” further corroborated PW1 evidence that it was the accused who murdered the deceased herein.
213. The accused assertion that he did not harm the deceased on the material night must also be taken with a pinch of salt. His evidence that the noise PW1 heard from the room were “joyful noises of lovemaking” is doubtful as In defence he stated verbatim as follows;

“Pw-1 Grace opened the gate and I went straight up to the bedroom, and found koki in bed. She had improved health wise. Her body temperature was down and she was happy as I had



secured certain contracts for the law firm. We talked, I kissed her and tacked her in bed and left as my Thursdays was for “boys day out.”

214. This evidence confirmed that the deceased and the accused did not make love on the material evening and that in all probability the noise that PW1 heard, which in her evidence she described as, “ I heard movement like people running upstairs” was, the ensuing fight which occurred between the two, and led to the untimely and unfortunate death of “Elizabeth Koki Musyoka.”
215. The accused also pointed out that the evidence of PW1 was contradicted by PW14, who testified that PW1 had told him, that the deceased had shouted at her and told her to lock the door to prevent the accused from leaving. This implied that by the time he was leaving, the deceased was still alive and did not have a hand in her subsequent demise.
216. PW1 evidence verbatim was that,
- “I went about my chores between 9.00 pm to 10.00 pm. The accused called me several times. I wondered why he was doing that as he had not done that before. He directed me to lose the gate and drove off in the car.”
217. I have myself also subjected the evidence adduced by PW14 to fresh scrutiny and though it is true that there were minor inconsistencies in his evidence when considered with PW1 evidence, I find that the evidence referred to above of PW1 confirms the correct position of what transpired on the material night. I am unable to find that the said evidence of PW14 was material enough to warrant raising of material doubt in favour of the accused person.
218. During engagements with the accused during these proceedings, I observed that the was intelligent, “sharp like a fox” and had a “silver tongue.” He came across as a street-smart person, who could talk his way out of trouble. In defence openly lied about his movements on the night of 07.01.2021 after leaving the deceased house and also lied regarding his actions which led to him to acquire fake travelling documents to escape the long arm of the law. His evidence as a whole therefore had to be taken with a pinch of salt.
219. When considered in the totality, the veracity of the prosecution evidence forms a complete chain of events that unerringly points at the accused as the guilty party who had a hand in the murder of “Elizabeth Koki Musyoka” and leads to the inescapable conclusion that within all human probability, the murder which occurred was without doubt committed by him.
220. The court safely concludes so and holds that the accused person had a hand in the unlawful death of the deceased.

### **Malice Aforethought**

221. Having found that the prosecution has proved actus reus, the other issue for determination is whether malice aforethought can be inferred from the prosecution evidence presented. The offence of murder is complete when, “malice aforethought” is established. Section 206 of the *Penal Code*, provides that:
- “(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.”

222. It is sufficient to say that the mental element required by section 206 of the *Penal Code* can be equated to broad guidelines set out in the case of Tubere s/o Ochen vs. Republic [1945] 12 EACA 63:

“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”

223. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.

224. A similar statement of Law was made in the persuasive authority of S. vs. Sigwahla 1967 4 SA 566 in which the court stated:

“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a dolus eventualis as distinct from dolus directus.”

225. The evidence adduced positively confirmed that the accused person had a rich history of assaulting his girlfriends and “isitoshe”, had confessed to PW2 to have pushed the deceased to the wall after a scuffle arose, from SMS messages the deceased had seen on his phone. Though he left the deceased house, he was worried about what he had done, and his subsequent behavioural actions of 08.01.2021 confirmed that he knew he was in hot soup.

226. PW5 Dr Johnsen Odour confirmed that the deceased had died of asphyxia caused by suffocation. Under re-examination he, the good doctor clarified that the deceased was suffocated by someone pressing her mouth and nose so that she could not breath. PW1, PW6, and PW14 confirmed that the deceased face was covered with two pillows, one of which was bloodstained and was definitely the weapon used by the accused to suffocate and snuff life out of the deceased.

227. From the above analysis, it is clear that the accused did not have any other intention but to inflict grievous harm upon the deceased. It is my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred from the nature of the injury inflicted on the deceased that the accused person's action was premeditated. In the circumstances, I am persuaded beyond reasonable doubt that the prosecution has proved their case and specifically the presence of malice aforethought on the part of the accused.

228. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, Christian Baledi Kadima Alias Erick Kambaye Katalayi, Alias Eulogue Christian Baledi Kadima beyond reasonable doubt and convicted him accordingly under section 215 of the *Criminal Procedure Code*.



229. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

230. It is so Ordered.

**JUDGMENT READ, SIGNED AND DELIVERED VIRTUALLY VIA TEAMS AT MARSABIT THIS 27<sup>TH</sup> DAY OF MARCH 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

In the presence of: -

..... Accused

..... For O.D.P.P

.....Court Assistant

