



**Republic v Muthini (Criminal Case 40 of 2020)
[2025] KEHC 7576 (KLR) (27 May 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 40 OF 2020**

**FR OLEL, J
MAY 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER NZUKI MUTHINI ACCUSED

JUDGMENT

A. Introduction

1. The accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) of the Laws of Kenya. The particulars of the offence were that on or about the night of 14th day of October, 2020 at Kaburini area in Thika – East Sub County within Kiambu County, he murdered Peter Kariuki Ndegwa Alias Njamba.
2. The accused person was arraigned before court and took plea on 26th October 2020. He denied the charge faced and pleaded not guilty. The case proceeded to full trial with the prosecution calling ten (10) witnesses in support of their case.

(B) Prosecution Case

3. PW1 Veronica Mwendu Njuguna testified that she was a bar attendant at a Chini ya Mnazi pub situated at Magogoni within Kiambu County. On 14.10.2020, she reported for duty at about 5.00 pm and later at about 10.00 pm saw the accused and his friend known as Peter enter the bar. They were her customers and were persons well known to her. She proceeded to serve them alcohol, and soon thereafter, the deceased too, walked in and requested to be served with a mug of alcohol, but she declined to serve him since he did not have the cash to purchase beer.
4. At about 10.30 am, she told the accused person to finish his alcoholic drink as she wanted to close the bar. The accused friend, known as Peter, left first, and then after about ten minutes, the accused and



- the deceased, walked out of the bar together. She then proceeded to close the bar at around 11.00 pm and retired to sleep in her room, which was next to the said bar.
5. The following morning, at about 8.00 am, she was called by a neighbor known as “Maina”, who informed her that “Njamba” had died. She proceeded to where the deceased body was discovered, which was a 5-minute walk from the bar, and confirmed that what she had been told was true. PW1 further noted that the accused and the deceased were regular customers at her bar, and were persons well known to her. She identified the accused on the dock and also confirmed that she had not seen them argue and/or disagree before.
 6. Under cross examination, PW1 confirmed that both the accused and the deceased arrived at the bar, when already drunk, but she did not sell any alcoholic drink to the deceased as he did not have money to purchase the same. She repeated her evidence in chief as to what occurred on the material evening and confirmed that there was no scuffle/disagreement as between the accused and the deceased on that material day.
 7. PW2 Annah Njeri Ndegwa, confirmed that the deceased was her elder brother and ordinarily resided with Magogoni area of Kiambu County. On 14.10.2020 the deceased passed by her house at about 5.00 pm and informed her that his employer had sent him to look for the services of “mama fua”. Later that evening at about 9.00 pm the deceased again passed by her home carrying chicken, which he requested her to keep for him. she confirmed that by then the deceased had taken a little alcohol and on the following morning, was surprised to receive news from the woman who had gone to wash cloths, that her brother had been killed at Makaburini.
 8. She rushed to the scene and was confronted by this sad reality as she saw his body covered in a lesa. She asked the police to allow her to view his body, and she confirmed that indeed it belonged to her late brother. She observed that he had an injury to his face, which was still oozing blood and also suffered other injuries to the back of the head, stomach, and all over his body. After the deceased body had been taken to Thika level 5 hospital, together with the 3 policemen who remained at the scene, they retraced the deceased’s movement to the bar where he was and to his workplace.
 9. Thereafter, based on information gathered, they went to look for the accused as he was the last person seen with the deceased, and the deceased’s body had been found near (about 70 meters) from a construction site, where he worked. The police picked up the accused and his friend, known as Peter, and directed the accused to lead them to his house. Once they arrived, the accused directed the police to his neighbour’s house and stated that he did not have the keys to the said house, nor did he have his cellphone to enable him call his wife to come open the door. Shortly thereafter, the real owner of the house came and burst his bubble. The accused then started to tremble and attempted to break free/run away, but was quickly apprehended by the police.
 10. The police then entered his house and, as a result of the search carried out therein, recovered blood-stained clothes (grey jacket and blue jeans) in a water basin that had been pushed under the accused bed. The water in the basin was also blood-stained. They again went back to the construction site (where the accused worked), which was about 70m from his house, and again, upon search, the police recovered the deceased’s clothes within the said construction site. The cloths recovered included a black trouser, a blood-stained jacket, and T-shirt, which was brown with pink strips. Also recovered from the crime scene was a blood stained stone, which she believed the accused used to assault the deceased.
 11. She identified all the recovered items and confirmed that the accused was a person well known to her as they used to go to church together, but after some time, the accused had stopped attending the said church. Finally, PW2 also confirmed that she was present when the post mortem was conducted at Thika level 5 hospital and had identified her brothers’ body before the said process was undertaken.



12. Under cross examination, PW2 confirmed that when she saw the deceased on the material night at about 9.00 pm, he had taken alcohol but did not appear drunk. He had also worn the cloths which she had identified before the court. She reiterated that at his residence, the accused he had deliberately directed them to the wrong house and it was his landlady who came and redirected them to his house, where the blood-stained cloths were recovered by the police officers. She was also not aware of the kind of relationship/friendship the accused and the deceased had.
13. PW3 Rose Njoki Njeri, confirmed that the deceased was her uncle and he resided at Kona Mbaya in Magogoni. On 15.10.2020 at about 7.30 am, she was enroute to work with her friends, when she got a call from Mama shiku, requesting her to go to Magononi Cemetery to identify a body which looked like her uncle's. she dashed to the scene of crime and unfortunately confirmed the sad news.
14. She observed that the deceased body was naked and he was lying facing down, while the forehead was facing to the side. She positively identified her uncles' body and after the police had processed the scene of crime, they took the deceased body to the mortuary. While still at the scene, they gathered from the grape vine that the accused had been arrested and she went to the suspects house which was about 150m away and saw the blood-stained cloths recovered from the accused house. They accompanied the police as they continued with their search and moved back to a nearby construction site, where they again recovered the deceased blood-stained cloths.
15. PW3 confirmed that she knew he accused as they had attended the same church for about three (3) years and positively identified him on the dock. Under cross examination PW3 confirmed that the deceased was her maternal uncle and she had not seen him throughout the incident date. She confirmed that the deceased used to drink Alcohol and had a pervious incident when he sustained an injury and on inquiry, he had explained that he had been robbed of his money. She also could not comment on the deceased relationship with the accused person.
16. PW4 Micheal Nyoro Thiongo, testified that he knew the deceased, who worked as a farmhand, within their home. On 14.10.2020 at about midday he instructed the deceased to go look for a lady known as "Mama Kanini", as they needed her services to wash cloths on the following day. He did not meet the deceased again that evening and was surprised to be called on the following morning by his friend, "N'gan'ga", who informed him that a body of a person who looked like the deceased had been found at Makaburini area.
17. He dashed to the scene of crime and confirmed that indeed the body which had been discovered was that of the deceased. He observed that the body was naked, and next to the body he saw a stone which had blood stains. The police were called in and they secured and processed the scene, before taking the deceased body to General Kago Mortuary. The police started to retrace the deceased movements of the previous evening and he accompanied the police to their home and later at about 11.00 am was called to identify the deceased blood-stained cloths, which had been recovered during investigations from the accused house. He knew the said cloths as the deceased had worked at their home for about four (4) years and further identified the said cloths which were before court.
18. Under cross examination, PW4 confirmed that he did not know the accused and did not know if the accused and the deceased were friends. He also confirmed that the deceased used to drink Alcohol and once in a while would arrive back at his place of work drunk.
19. PW5 Margaret Wahu Maina, stated that she was a gazetted government Analyst (gazette Notice No 9025 of 2018) deputized to work at Biology laboratory within the Government chemist department and had ten (10) years working experience. Through an exhibit memo form dated 22.10.2020, she



received various items forwarded to her by Sgt Joyce Chepkurui stationed at DCI Thika East. The items forwarded included;

- a. Blood sample in a bottle marked 1(a) belonging to Peter Nzuki Muthini.
- b. Piece of cartilage in a bottle marked Peter Kariuku- deceased 1(b)
- c. Nail clipping of Peter Kariuki- deceased, wrapped in a paper marked 1(c)
- d. Swap on cotton swap of Peter Kariuki, marked 2(a)
- e. Swap on cotton of Peter Kariuki, marked 2(b)
- f. Jungle green jacket placed in a khaki envelop, marked 3(a)
- g. White and black flowered shirt placed in a khaki envelop marked 3(B), (MFI 5)
- h. Blue pair of jeans trouser marked 3(c)
- i. Light brown hat marked 3(d), (MFI-8)
- j. Black pair of trousers marked 4(a),(MFI -4)
- k. Brown jacket marked 4(b), (MFI-3)
- l. Brown T shirt with pink strips marked 4 (c), (MFI5)
- m. Stones marked 5(a), (MFI 6).

20. she undertook her analysis and made the following findings

- a. Item 2(a) and (b) was stained with blood, but not semen or spermatozoa
- b. Item 3(a), 3(c), 4(a) & (c) were moderately stained with blood of human origin.
- c. The jacket item 4(b) and stone item 5(a) were heavily stained with blood of human origin
- d. The shirt item 3(b) and hat 3(d) were not stained with any blood.

21. PW5 did further carry out DNA profile analysis to find out/match the blood stain and came to the following conclusion.

- a. The DNA profile generated from anal swap item 2(a)& 2(b), the jungle green jacket item 3(a), jeans trouser item 4(a) all matched the DNA profile generated from the cartilage and nail tipping, items 1(b) and 1(c), both marked Peter Kariuki -Deceased.
- b. The DNA profile generated from blood stained jacket, item 4(b), T-shirt item 4(c) generated a mixed DNA profile that matched DNA profile generated from cartilage and nail clippings, item 1(b) & 1(c) both marked Peter Kariuki-Deceased and DNA profile generated from the blood sample, item 1(c) marked- Peter Nzuki Muthini (accused)

22. PW5 produced her report as Exhibit 10 and under cross examination confirmed that she had generated DNA samples from the accused blood sample, swaps extracted from the deceased and also from the blood stained cloths recovered, despite some being partially contaminated when soaked in water. They had also suspected that the deceased might have been sexually assaulted because he was found naked, but no evidence of the same was found.

23. PW6 Dr John Mathaiya, testified that he a medical doctor/pathologist currently stationed at Kiambu county at Thika level 5 hospital. On 21.10.2020 he received a request from DCI Thika East to ascertain



the cause of death of one Peter Kariuki Ndegwa, whose body was found on 15.10.2020 at Magogoni cemetery area. He conducted the post mortem at General Kago Funeral home and before the autopsy the said body had been identified by Hannah Njeri and Joseph Njuguna, the deceased sister and brother respectively.

24. On external examination the deceased had bruises on the face, skull, neck, both shoulders, both arms and upper chest, upper and lower back, swollen knees with bruises extending to both legs, buttocks and lower abdomen extending to his private area. The deceased also had abrasion on the anal opening (anal bunge) extending to the surrounding skin and also bruises and abrasion of the scrotum.
25. Internal examination revealed that the deceased suffered multiple fracture of the ribs, multiple bruises involving the area surrounding the anal region, with the said bruises extending to the rectum (reservoir where food is held). There was hematoma (blood clots) within the rectum and walls of the rectum and anal region, posterior tear along the anus which was fresh, which meant that extra physical pressure was applied, and perennial bruises between external genitalia and anal opening was also noted.
26. The deceased also had injury to his scrotum area which also had blood clots and bruises. On the head, he observed scalp bruises, blood clots beneath the scalp, injuries to the brain leading to internal bleeding due to injury of tiny vessels and sinuses.
27. PW6 formed the opinion that, cause of death was due to multiple injuries caused by blunt force trauma. There was also evidence of sexual assault. He extracted rectal swabs and cartilage for DNA analysis and handed over the specimen to the investigating officer to forward the same to the government analyst for examination.
28. He issued the family with the burial permit No 647485 and signed the post-mortem report on the said date, which he produced in court as an exhibit. Under cross-examination, the good doctor confirmed that the injuries sustained by the deceased were defensive in nature, and if more than one DNA extract was generated by the government analyst, it is likely that the 2nd DNA profile picked belonged to the accused. He also affirmed that the deceased was sexually assaulted, and he sustained injuries all over his body.
29. PW7 George Guthunyi Ndungu also confirmed that he was a resident of Magogoni in Kiambu county and was the construction site manager at the construction site where the accused and Peter worked. On 15.10.2020 as he was reporting for work, he met a crowd of people by the road side and upon inquiry was told that a person had been killed and his body dumped by the road side. He proceeded to his work place and after a while the police came and arrested both the accused and Peter and went away with them.
30. Later Peter, came back to the construction site crying and lamented that the accused person knew what had happened to the deceased and when they went to his house, he had tried to escape but was chased, rearrested and handcuffed. He confirmed that he knew the accused person and physically identified him in court. Under cross examination he confirmed that they worked together with the accused person at the construction site, and was not aware of any material evidence/recovery that made by the police from the said construction site.
31. PW8 Pc Samuel Ndungu Mwangi testified that on 15.10.2020, he was on duty at Magogoni police station, when he was informed by members of the public that a body had been discovered near the cemetery. He informed his station in charge and together with PC Ngaribuni proceeded to the scene, where they found a naked body of a male adult lying facing down with injuries all over the body. He then contacted the DCI, who came and took over the crime scene and later was tasked to transport the body to General Kago mortuary for preservation.



32. PW 9 Inspector Peter Mureithi testified and stated that he was a scenes of crime investigator appointed under gazette notice No 5548 of 30/06/2015. On 15.10.2020, he received instructions to process a murder scene along Thika – Garissa highway and on reaching the scene, he found a body which had multiple injuries. He took photographs of the primary scene and later proceeded to the accused house and construction site where blood stained cloths of the deceased were recovered. PW9 produced the whole set of photographs’ taken from the three scenes and plus the certificate as Exhibits before court. Under cross examination, he confirmed that the blood stained cloths were collected from the secondary scene and sent to the government analyst for examination, which tied the accused involment to the crime committed.
33. PW10 CIP Joyce Chepkiui, testified and stated that she was currently attached to serious crime unit based at DCI headquarters, but previously was attached to DCI, Thika East and was the investigating officer of the case before court. On 15.10.2020 at around 8.00am she was in her office at Ngoliba police station, when she was called by the DCIO, Thika East who brief her of the murder and assigned the case to her. She immediately proceeded to the murder scene and found that police officers from Magogoni had already arrived at the scene and secured the area.
34. The deceased naked body, had injuries sustained to the head, hands and on the chest. She also observed that besides the body there was a big stone which had blood stains and sandals, which she presumed belonged to the deceased. She took over the crime scene and commenced investigations. She assigned her fellow police officer duties/ responsibility to look for evidence and also personally interrogating several members of the public and took their phone numbers for follow up. Once the scene of crime officers had completed their work, they released the body, which was taken to General Kago Mortuary for preservation.
35. For the oral interviews carried out, they established that the deceased loved taking Alcohol and proceeded to chini ya Mnazi bar, which they learnt was his local joint. They interviewed the bar maid (PW1), who confirmed that she knew the deceased as their regular customer, and affirmed that on the previous night, he had left the bar at around 11.00 pm, while accompanied by the accused. They asked her to lead them to her house, which they searched but did not find any incriminating evidence.
36. Based on inform extracted from PW1, they looked for the Peter Nzuki Francis and upon searching his house, they did not find anything significant. They then looked for the accused and found him at the construction site, which was adjacent to Thika – Garissa highway and asked him to lead them to his house. When they got there, the accused lead them to his neighbour’s house, which was locked and he informed them that his wife who had the keys had gone to the market. They decided to wait but by good luck the accused neighbour’s child had eavesdropped into their conversation and ran and informed her mother of the false allegation made by the accused.
37. The said neighbour, Anastancia Njeri Wanjiru, came and informed them that the closed house, which the accused had pointed as his house, belonged to her and promptly pointed out the correct house which was rented by the accused person. The said house was open (the door was not locked) and was a single room but partitioned into double room. Upon searching, they discovered a wash basin under the accused bed which had soaked cloths, heavily stained by blood. At that moment the accused freed himself from the officer who was guarding him and took off. They gave chase and managed to apprehend him and ensured he was handcuffed.
38. The scenes of crime personnel were still at the primary crime scene and she called them to come and process the secondary scene too. The accused wife was amongst the crowd that had gathered also informed her that the accused had been threatening to kill her and thus she had run away to seek refuge at her pastor’s house. She confirmed that the blood-stained cloths recovered belonged to the accused.



39. The said cloths included a white shirt with black flowers, a blue jean, a green jungle jacket and grey hat. She further testified that they continued with their investigations and did a 360 degrees search, around the scene of crime and not far from the construction site they recovered a cream jacket, a black pair of trousers and brown shirt, which relatives of the deceased identified as cloths belonging to the said deceased. PW10 produced the said set of cloths and the blood-stained stone as Exhibits before court.
40. It was her further testimony that the doctor, who did the post mortem, had extracted swabs from the deceased and she also collected a sample of the accused blood, and sent both extracts to the government analyst for examination. The post mortem revealed that their deceased died as a result of head and brain injury, which was caused by a blunt object. The doctor also noted that there had been attempted sexual assault on the deceased based on the injuries observed on his anus.
41. Based on the evidence gather, she charged the accused before court and confirmed that he was the suspect they arrested on the material day. Under cross examination, PW 10 confirmed that the government analyst did not give any result regarding the sexual assault, but she believed that the accused had attempted to sodomise the deceased based on the injuries observed. she was referred to the statement of PW1 and confirmed that the said witness had stated that there were other persons at the bar on the material night who had left slightly earlier. Be that as it may PW1 had also affirmed that the deceased and the accused were the last customers who left the said bar on the material night.
42. Further, the construction site where the accused worked was on the opposite side to where the deceased body was found. When she interrogated the accused person, he had alleged that he saw the accused attacked by three persons, who he could not identify, but this version of events was also doubtful based on the evidence gathered and the stained cloths found in his house.
43. PW10 was also cross examined by the accused an she clarified that they extracted swabs from the both the accused and the deceased and had the same examined alongside the blood-stained cloths recovered. She also clarified that before they took the accused blood sample, they sought and received his consent and referred the court to an order for DNA sampling procedure dated 21.10.2020 signed by the SCCIO authorizing the same. PW10 also confirmed that when they went to the accused house, they found its door unlocked and she did not know who had left it open.
44. The prosecution closed their case at that point and the accused was placed on his defence and opted to give sworn evidence.

C. Defence Case

45. The accused gave sworn statement and testified that he was a mason by profession and resided within Ngoliba area in Thika East. He knew the deceased socially, as they would meet at the local clubs, but they were not friends.
46. On 14.10.2020, he woke up and went to work as usual until about 5.00 pm, when he was paid three days dues, which was outstanding. Thereafter, he went to the local market and ate meat, before proceeding to “Takeaway club” where be bought and drank “chromo vodka”. He opted to change his drinking venue and moved to “Jubilee club”, where continued to drink spirits and “keg beer” and finally went to “Club 237” to watch football, but found that the football match he wanted to watch had already been played, thus opted to take a “bodaboda” ride home.
47. While enroute, he decided to stop at “chini ya mnazi pub”, where he bought “keg beer” for himself and Peter, “ his bodaboda rider”. It was at this point that the deceased walked into the pub and requested him to buy him Alcohol, but he told him that he did not have money. The deceased left and went to



sit with other customers and after sometime, the bar owner intimated to them that she wanted to close for the day and ordered all customers to finish their drinks and leave.

48. He left alone and started to walk towards his house. When he reached at a place known as “makaburini” he noticed that there was movement of some person’s in front of him, before they disappeared. He was not sure of the number of persons he saw, but believed that they were three people. When he reached the spot where the said persons were, he saw a person lying on the ground and was struggling to raise up. He tried to help him stand up, but realized the said person was drunk and he did not have strength to carry him, thus left him at that spot and went home, where he removed his cloths, showered and slept.
49. The following morning, he took breakfast and went to work as usual at the construction site, which coincidentally was opposite, where he found the injured person the pervious night. He noticed a crowd of people and the police at the scene and upon inquiry was told that a person had been killed and his body damped at the said site. He continued to work until about 11.00am, when the police came to the site and asked for him and Peter Ngumi. They identified themselves and accompanied the police, who requested to go search their respective residence.
50. They first went to his residence and he was shocked to find his door lock had been broken. The police entered therein and during the search found cloths that he had left soaked in water. He tried to run away, but the police gave chase, arrested him and took him to the police station. He refuted PW1 evidence and denied being the last person to leave the bar with the deceased. It was his evidence that the deceased left before him as he remined behind to finish his beer.
51. The accused person also confirmed that the police had recovered and taken away the cloths he wore the previous night, and clarified that while assisting the deceased, he did not notice that he was injured and that explained why his cloths were blood stained. He further clarified that he had no personal disagreement with the deceased and had no reason to harm him. He was also categorical that he did not murder the said deceased person.
52. Under cross examination, the accused reiterated his earlier evidence and further confirmed that he attempted to escape, by running away, but was re-arrested and taken to custody. He denied harming the deceased and insisted that he only attempted to help him

D. Submissions

(i) Accused Person’s Submissions

53. The Accused’s counsel conceded that the death of the deceased was proved, but he did contend that the accused had been wrongly charged simply because he had tried to assist the deceased, who sustained injuries on account of being assaulted by unknown assailants. During this process, the accused’s clothes had come into contact with the deceased’s blood, and that explained why his clothes were blood-stained.
54. . The accused did not have any grudge and/or motive to murder the deceased, and the prosecution’s attempt to link this murder to sodomy had failed as the same was not proved by the evidence presented. Therefore, an important ingredient of murder, which was malice aforethought, had not been proved, and the offence of murder could not be sustained. Reliance was placed in the case of *Nzuki Vrs Republic (1993)*, *Eklr*, *Rapheal Mbuvi Kimasi Vrs Republic (2014) Eklr*, & *James Mwangi Vrs Republic (1983) KLR*, where it was emphasized that in the absence of malice aforethought, the charge of murder could not be sustained.



55. Secondly, the accused's counsel submitted that there was no direct evidence linking the accused to the murder, and PW1's evidence also did not place the accused as being the last person seen with the deceased, since the pub where they were had other customers on the material night. No rational inference could therefore be drawn that it was the accused who had a hand in the unfortunate death of the deceased. Reliance was placed on the R Vrs Lifchus (1997) SCR 320, Miller Vrs Mister for Pensions (1947) 2 ALL ER 372, DPP Vrs Woolmington & Caroline Wanjiku Ngugi Vrs Republic (2015) Eklr, where the concept of burden of proof was discussed.
56. In conclusion the accused counsel urged the court to find that the prosecution's evidence had not met the standard of proof which was beyond reasonable doubt and urged the court to acquit the accused person.

(ii) The Respondent's Submissions

57. The respondents on their part rehashed the evidence presented and stated the circumstantial evidence presented cogently and unerringly established the accused persons guilt as he was the last person see with the deceased and soaked his cloths in water to conceal the evidence of his involvement in the crime that occurred. The accused was also the person last seen with the deceased and the burden shifted to him to satisfactorily explained what had occurred. In defence he had offered an escapist explanation, which could not hold in light of the prosecution evidence and thus had to be held to account for this murder. Reliance was place on Judith Achieng Ochieng Vr Republic (2009) eklr, Ahmed Abolfathi Mohammed & Another Vrs Republic, Republic Vts Ombija (Criminal case No 13 of 2020), (2024) KEHC 2974 (KLR) & Stephen Haruna Vrs The Attorney General of the Federation (2010) 1llaw/CA/A/86/C/2009.
58. Secondly, the respondent also submitted that from the nature of injuries inflicted, nature of weapon used, the part of the body targeted and the conduct of the accused before and after occurrence of the crime, they had firmly established that the accused sole intention was to eliminate the deceased and succeeded in doing so. They had therefore firmly established the accused person guilt through the circumstantial and direct evidence presented and urged the court to convict him. Reliance was placed in Republic Vrs Tubere S/O Ochen (1945) 12 EACA 63 to emphasis that the ingredients of Malice aforethought had been proved.

E. Determination

59. I have considered the evidence and submissions on record, and the question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein participated in the murder of Peter Kariuki Ndegwa Alias Njamba, the deceased herein.
60. 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.”
61. 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.”

62. 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: -
- a. the death of the deceased and its cause;
 - b. that the accused committed the unlawful act which caused the death of the deceased; and
 - c. that the accused had malice aforethought.
63. I will now proceed to interrogate each issue.

i. The death of the deceased and its cause.

64. It is common ground that Peter Kariuki Ndegwa Alias Njamba, died on the night of 14.10.2020 as a result of fatal injuries sustained from an Assault. This was confirmed by all the witnesses and especially by the evidence of Dr J.N Mathaiya (PW 6), the pathologist who conducted the post mortem on 21.10.2020. He described in detail the extensive injuries sustained by the deceased during the assault and formed the opinion that the cause of death was due to multiple injuries to the (head, chest and abdominopelvic injuries due to blunt force trauma). Other significant injury noted was that the deceased was sexually assaulted. The post mortem report was produced into evidence as Exhibit 7.
65. This court therefore finds as a fact that the deceased died as a result of the said extensive injuries sustained as enumerated above.

ii. Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:

66. PW1 the proprietor of “chini ya Mnazi bar”, where both the accused and the deceased regularly patronized, vividly recalled that on the material night, the appellant walked into the pub at about 10.00pm and ordered “keg beer” for himself and his friend also known as “Peter”. The deceased also later walked in alone at about 10.30 pm, but she refused to sell him beer as he had no cash.
67. After a while, the accused friend known as “Peter” left and they remind the three of them. At about 11.00pm she informed both the accused and the deceased that she was about to close down for the day, and asked the accused to finish his drink and leave. The accused took about 10 minutes to finish his drink and left the bar together with the deceased. Her evidence verbatim was that, “They stayed for about ten 10 minutes after Peter had left. Nzuki and Njambi left together. I don’t know where they went.”
68. The following morning word went around that the deceased had died and PW1, PW2, PW3, PW4 all went to the scene of the incident and confirmed this fact. Further PW2, PW3 and PW4 accompanied the arresting officers as they did their 360-degree search while looking for evidence to unravel the crime. They were all present when the accused was frog matched to his house which was about 150m



away from the crime scene and recoveries of blood-stained cloths made therefrom. The accused also attempted to run away after this discovery and was chased down and re arrested. A further search around the incident scene also lead to the recovery of the deceased cloths hidden at a construction site where the accused worked.

69. The recovered clothing's (both the deceased and the accused), Swabs, nail clippings and a piece of cartilage extracted from the deceased body were sent to the Government Analyst together with blood sample extracted from the accused and PW5, who analyzed the same discovered that;
- a. The DNA generated from the blood stains on the anal swabs {Item 2(a) and 2(b)}, Jacket item 3(a) , jeans trouser item 3(c), trouser Item 4(a) and stone item 5(a) matched the DNA profile generated from the cartilage and nail clippings { items 1(b) and 1(c) } both marked "Peter Kariuki (deceased)" with probability of a random match of 1 in 4.74 x10(21).
 - b. The DNA profile generated from the blood stains o the jacket {item 4(b) and shirt Item 4(c) } generated a mixed DNA profile that matched the DNA profile generated from the cartilage and nail clippings from { item 1(b) and 1(c) both marked "Peter Kariuki (deceased) and the DNA profile generated from the blood sample { item 1(a) } marked "Peter Nzuki Muthini (accused)".
70. PW8, a gazette scenes of crime officer took various photographs of the incident scene, the accused house and where the deceased cloths were recovered at the construction site, and produced the same into evidence. PW9 extensively explained how she conducted her investigations and tied the accused with the crime committed.
71. From the evidence adduced, nobody saw the accused harm the deceased but the circumstantial evidence gathered laid a strong basis to support an inference of his involvement in the said crime. The prosecution evidence was therefore circumstantial but, where the said evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged.
72. 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."
73. 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."



73. Also 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.”

74. In summation, of the afore stated 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.

75. 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.

76. 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, his cloths were stained with the deceased blood as confirmed by PW10 (the government analyst, through her report- Exhibit 10) and when the blood stained cloths were recovered in his house, the accused tried to escape from lawful custody, which was an indication of his guilt.

77. He therefore could be held responsible for the death of “Peter Kariuki Ndegwa alias Njamba” unless he provided cogent explanation to extricate himself from the accusation of having had a hand in his death.



78. This is based on 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.

79. 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.”

80. 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.”

81. 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.”



82. The explanation offered by the accused In defence that as he walked home, he noticed movement of three people in front of him and when he reached where they were, found the deceased lying down and struggling to stand up is half baked. Verbatim he did state in defence that,
- “I left going home-walking. Near Makaburini, I saw movement of people in front of me and they disappeared. Am not sure but I think that they were 3 people.....
- When I reached where they were, I saw a person on the ground struggling to stand up. I tried to help the person but I was drunk and did not have strength to carry him.”
83. The explanation offered by the accused was hollow, for the reason that, the accused was not even sure of the number of persons he saw, nor did he see the said persons assault and/or violently rob the deceased. Logically it was also expected that if they were robbers, he would have first noticed them as they assaulted and robbed the deceased and there is likelihood that he too would have been attacked, but nothing of that sort occurred.
84. Further the government analyst report (Exhibit 10) was clear that the DNA profile generated from the bloods stains of the jacket (Item 4(b) ad T shirt (Item 4(c) all belonging to the deceased generated a mixed DNA profile that matched the DNA profile generated from the deceased cartilage,/nail clippings and the DNA profile generated from the blood sample (Item 1(a), which was extracted from the accused person.
85. If indeed it was true that the deceased was assaulted by the three persons as alleged by the accused, it was expected that, they would have been the ones who would have stripped him necked and dumped the deceased cloths within the construction site. Logically, by the time the accused was assisting the deceased, he would not be having his clothes on. If that be so, how then did his DNA profile end up on the deceased cloths. Did the alleged assailants come back and stripped the deceased necked after the accused had tried to help him? That too is highly unlikely scenario. In short, the accused explanation is not plausible and must be taken with a pinch of salt.
86. Finally, the accused deliberately mislead the police and pointed to a neighbours locked door to be his house and further lied that he did not have the keys thereto. Unluckily for him, this lie was made in the presence of the neighbours child, who went and informed his mother (Anatacia Njeri Wanjiru) of what had transpired. The said Anastacia, rushed home and burst the accused bubble and redirected the police to the correct residence. Upon search his blood-stained cloths were recovered and at that point the accused decided to escape from lawful custody, but was chased and re-arrested. If indeed he was innocent, why would he deliberately misdirect the police and also attempt to escape from custody?
87. when all the evidence presented is considered, 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 “Peter Kariuki Ndegwa alias Njamba” and leads to the inescapable conclusion that within all human probability, the murder which occurred was without doubt committed by him.

iii. Malice Aforethought

88. Having found that the prosecution has proved actus reus, the other issue for determination is whether malice aforethought can be inferred from the prosecution's 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.”

89. 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.”

90. Further, 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.

91. 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*.”

92. The deceased was severely assaulted by the accused and suffered from multiple bruises and abrasions of the face, scalp, neck, both shoulders, both arms, chest, upper and lower back, gluteal region, lower abdomen extending to the groin and perineum, both lower limbs, and external genitalia. Further injuries were also observed on the anal verge and the surrounding skin of the gluteal region, anterior chest wall had bruises, multiple rib fracture on the right rib R3 and left ribs R6 to R10 and multiple mild and multiple cerebral and cerebellar contusions leading to moderate intercranial hematomas.

93. From the above analysis of the injuries inflicted, it is clear that the accused did not have any other intention other than 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 injury inflicted on the deceased that the accused person's action was premeditated.

94. 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 too has been proved.



G. Disposition

- 95. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, Peter Nzuki Muthini beyond reasonable doubt and convicted him accordingly under section 215 of the Criminal Procedure Code.
- 96. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.
- 97. It is so Ordered.
- 98. It is so Ordered.

JUDGMENT, SIGNED AT KIAMBU THIS 27TH DAY OF MAY, 2025.

FRANCIS RAYOLA OLEL

JUDGE

Judgment read and delivered in open court on this 27th day of MAY 2025.

FRANCIS RAYOLA OLEL

JUDGE

In the presence of:-

.....Accused

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

.....Court Assistant

