



REPUBLIC OF KENYA
**IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE (SUB-
REGISTRY)**
CRIMINAL CASE NO. 41 OF 2023

REPUBLIC.....PROSECUTION

VERSUS

CHRISTOPHER SHIVAJI.....1ST ACCUSED

ANDREW CHIRCHIR SERGON.....2ND ACCUSED

JULIUS KIPROTICH KOSKEI.....3RD ACCUSED

PAUL WEKESA WANJALA.....4TH ACCUSED

JUDGMENT

1. The accused persons **Christopher Shivaji, Andrew Chirchir Sergon, Julius Kiprotich Koskei and Paul Wekesa Wanjala** have been jointly charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that the accused persons on the night of 7th and 8th July, 2022 at Kapchorwa village, Sirwa Location in Mogotio Sub- County within Baringo County jointly murdered Jane Jemutai Yegon.

2. The accused persons denied the charge and the matter was set down for full trial where the prosecution summoned a total of 13 witnesses in support of the charge preferred against the accused.

PROSECUTION EVIDENCE

3. PW1 was Francis Kipruto Cherutich a resident of Mogotio Mogotio testified that he is a police officer at attached to Makadara Sub- County and on 2nd July,2022 he arrived home for leave and on 3rd July,2022, he was called by the deceased who asked whether he had fertilizers since he does business of selling fertilizer on the side. He informed her that he did not have fertilizer and that on 8th July,2022, he went to the farm at around 3: 30p.m and returned at 4: 30p.m when Boaz Toroitich arrived and informed him that while herding goats, he saw a leso and on checking it properly, he confirmed that it was a body covered by grass. He said Toroitich him informed him that the deceased had worn a biker she was wearing a biker, innerwear and a jubilee T-shirt and it looked like she had gone for a call of nature. He said that people came to check and he called the chief called David Kanani who called OCS and police arrived and the body was identified by a worker Elija Kigen as the deceased was his sister in-law. After the body being identified, he went to inform her family and the body was taken to Mercy Hospital mortuary. He said he did not witness what happened to the deceased.

4. PW 2 Gladys Lagat a resident of Sirwo testified that he does business of selling vegetables at Kapsok centre and that Accused 1 Christopher Shivachi send her Kshs.1,000/= to her phone Number 0115527239 but did not call to tell her why he sent the money to her but sent Julius who used to visit to drink alcohol at their home to tell her that the 1,000/= send was for drinking alcohol. She said that Julius went to drink alcohol using the money send to her for 3 days.
5. PW3 Jona Toroitich who operates a shop and M-Pesa called Chysle testified that on the 6th August,2022, he was at home when he received a call from a person who identified himself as an officer from DCI Mogotio and who inquired whether a person called Christopher Shivaji had visited his shop and he inform him that he will check the records. He said he went to the shop and checked and found the name Christopher Shivaji and the next day, 3 people who identified themselves as police officers went to his shop and checked the record and found that Christopher Shivaji deposited 20,000/= on the 23rd July,2022 and 25th July,2022 he deposited 12,000/=. He said they photocopied the records. He identified in court a photocopy of M-Pesa book which shows Christopher deposited using Identity Card No. 27165795.
6. PW 4 Boaz Yegon alias Boaz Toroitich a resident of Kapchorwa Sirwo testified that on the 8th July,2022, he was herding goats when he saw a red cloth and on moving

closer, he realized it was a human being. He went home to report to his brother who informed a neighbor Francis who is a police officer. He said when the body was identified, he realized the deceased was their neighbor. He said that he did not know who killed the deceased.

7. PW 5 Elija Kipkasi Kigen a resident of Kapchorwa testified that he purchased 4 acres of land at Kapchorwa in the year 2016 and as has 2 wives, he settled his second wife Jane Yegon the deceased herein at Kapchorwa. He said on the 6th July,2022, he was in Nairobi when he received a call while in Nairobi from his second wife Jane Yegon informing him that the grinding machine was missing as at the time, they were building at home and had a grinding machine and that he asked her if she had inquired from the two workers at home being Julius and Shivaji though he had not known Shivaji well as he was employed by his son whom he had delegated work to. He said his wife informed him that none of the 2 workers had information of the missing machine.
8. He further stated that in June, he had given Kshs 100,000/= in cash to his second wife the deceased herein to buy timber for constructing a store. On the 8th July,2022, at around 9p.m, he received a call from his cousin Joel Koima who informed him that his wife had been found having fallen in a cliff. He informed his children and later learnt that police had taken the body to the mortuary. The next day he went to Mercy Mission Hospital and before he requested to see the

body, he asked what she had worn and the mortuary attendants informed him that she had a pant, biker and red jubilee T-shirt and Leso and then showed him the clothes.

9. He said that he was then shown the body of the deceased and he was able to see blood in her left eye and he also found out that she tried to go for long call of nature but she did not finish. He said that his wife used to do small businesses at home and on reaching home, he met the police and checked a small house behind the house they were building where she slept. He said he saw feaces in her beddings and he remembered what he saw in her body at the mortuary and realized that someone stepped on the bed with mud. He identified the mattress cover and the blanket which had feaces and was stepped on.
10. He said postmortem was done at Mercy Mission Hospital where the doctor concluded that the deceased was strangled. He said the neck was loose/going round. He said that his sons would send money to his wife's phone to pay workers and that he had only send her Kshs 100,000/=for construction. He said police informed him that his wife had about Kshs.174,000/= in her phone and kshs.80,000/= was transferred the night she died to the phone of Accused 1 Shivaji.
11. PW6 No.81887 Sgt. Rotich Kipngeno a police officer attached to Mogotio police station and that on the 8th

July,2022, at about 1900hours, the then OCS Mogotio CIP Jackson Kirwa called him and asked him to accompany DCI officer as there was a body recovered at Sirwa. He proceeded to the scene with PC Kimetto and at Sirwa they met members of public who led them to the scene where the body was which was in a steep hill and upon examination of the body, they saw injuries on the head and the deceased had a biker and there were feaces on the body. He said that it was disturbing and they could not take it as a simple fall on the cliff. He said that he went upwards leaving his colleagues Kimetto with the public and his aim was to guide them move the body from the cliff. They moved the body very carefully and they proceeded to the mortuary.

12. He said the deceased had a biker and there was a lessor. He said the investigating officer took over investigations and took forensic analysis. On 28th July,2022 he went to the scene with in charge CID Baringo where they found detectives from regional Headquarters Nakuru and suspect Shivaji accused 1 who was an employ of the family had already been arrested. He said the other 2 had already been arrested. They were jointly charged.

13. PW 7 Dr. Kibet Kimwei a medical doctor at Eldama Ravine Sub- County Hospital testified that he postmortem on the body of Jane Chemutai on 15th July2022 at Mercy Mission Hospital and the findings were that she had injuries around the face, there was blood clot around the eyes and she had a

displaced fracture around the face and a neck break subluxation at C2 C3. He concluded that the cause of death could be dissection with acute head injury following a fall. He produced the post mortem report as exhibit 4.

14. PW8 Victor Kipkazi a son of the deceased testified that he works for KDF and on the 18th July,2022, he was at home when police officers went to arrest Accused 1 Shivaji and that a grinder had gotten lost before and he had inquired from Shivaji but he said he did not know. He said that he entered his house and found disc of the grinder, gloves and woman clothes. He said that he employed Accused 1 and the deceased is his mother. He said that he found 2 mobile phones and a spanner and he called police officers and informed them that there were things he had found at Accused 1's house and at the time, the 1st accused had been arrested. He said police went and took the things he had recovered. He said that his mother was a farmer and she used to sell goods. He identified the items he found Accused's house in court being gloves, petty coat which he found in A1's bag.

15. PW9 No.222026 Senior Sgt. Isaac Eman incharge Sirwa police station in Mogotio Sub- County testified that on the 8th July,2022 at around 5:00 p.m, while at police station, he received a call from Senior Chief David Keranin Sirwa Location who him that Francis Cherutich of number

0724431251 had called to inform him that a human body was seen in Kapchorwa at Perkerra Government Forest. He called the number and confirmed that there was a human body yet to be identified, he booked the report in OB and with 2 of his colleagues, Michael and Boniface went to the scene.

16. Pw 9 they went to the scene and met Francis who led them to where the body was. He said they pointed at the body as the terrain was bad and that he called OCS Mogotio to request for a vehicle and also help from DCI officers and while waiting, he inquired if the body could be identified and Christopher Shivaji identified the body as for her boss and said he did not know her full names but they knew her as Kogo and then showed them the home of the deceased and said that he had seen the woman that day in the morning as she had called him to say she was going to her other farm at Kapkein to see her other employee Julius who is Accused 3 herein.

17. He said the body was removed and taken to the mortuary and after 2 days, the OCS asked him to join him to the scene where they found deceased's husband introduced himself to them. He the deceased had worn a red T-shirt written Jubilee and that he did not know whether the photos of the scene were taken. He identified the photo of the deceased.

18. PW10 Gerishon Kibara Rono Inspector of police attached to DCI Headquarters cybercrime testified that he has worked for the last 7 years doing investigations and that he is holder of a Bachelor of Science in Information Technology from JKUAT and he has also undergone several trainings on forensics and he is a certified ethical hacker and a certified Cellified user. He said that on 4th October,2022, they received request by exhibit memo from DCI Mogotio in respect of the following exhibits: -

4 Mobile Phones marked MKD A1

- i. Itel Mobile Imei No.354627441596121
- ii. Exh. Techno marked MKDA2 Imei No.351764303204784
- iii. Exh MKDA 3 D-Light mobile Phone Imei No.864119052110684
- iv. Exh MKDA4 - Itel Mobile phone IMEI No.355580510552825.

19. He said that they received the exhibits on the 4th August,2022 and they were to analyze the messages made and received from the 4 phones. That on the 26th October,2022, he extracted and analyzed the contents of the 4 exhibits and prepared a report.

20. That in conclusion Exhibits A2 and A3 was supported for data extraction and Exhibits A1 and A4 were not supported for data extraction but extraction were limited to sim cards

paired to the exhibits. That after analysis, he produced a certificate and he produced the report as Pexhibit 8(a), Exhibit memo form Pexhibit 8(b), chain of custody form marked Pexhibit 8(c) and certificate of Electronic Print under section 65(8) as read with 106 of the evidence Act marked as Pexhibit 8(d).

21. PW11 No. 61062 Johnson Wambulwa currently attached To DCI Central Nairobi and formally DCI Mogotio until June,2023. He said that he was the investigations officer in this matter and on the 8th July,2022 at 5P.M, he received a phone call from DCIO Mr. Joseph Nzioka who informed him that there was a sudden death report at Sirwa and at the time, it was raining heavily.
22. He said the DCI instructed some officers to visit the scene and he informed Sergeant Rotich who was on duty stand by for the Mogotio Station. He said that he was accompanied by PC Kimetto of DCI and they proceeded to the scene and on arrival at the scene, after assessing the scene, they communicated to him through phone and confirmed that the deceased's body had been discovered away from her compound. That it had been dumped at a very steep place and they were assisted by members of the public to retrieve the body and it was brought on top and the body had injuries. They informed him that after assessing the home the deceased was living in which was a permanent house, the beddings were disturbed and one of the blankets

had some faeces. That in the homestead, the deceased was living alongside with shamba boy who is Accused 1 whose house was about 50 metres away. He said the body was taken to Mercy Mission mortuary for preservation awaiting postmortem and as investigations were ongoing.

23. He testified that on 10th July, 2022, together with PC Kimetto and PC driver Limo, they revisited the scene where they met the deceased's husband and went to the scene where the body had been retrieved and after analysis and assessing, they returned to the compound and revisited the home where the deceased lived and went to the house of the shamba boy and thereafter, they started interrogating witnesses and recorded their statements. He said at the time, no suspect had been identified.

24. He further stated that on 28th July, 2022, with collaboration with the regional team from Nakuru who were assisting with investigations, he filed a miscellaneous affidavit in respect to deceased's mobile phone to see if anything happened to it. He said they established that on that particular night of 7th and 8th July, 2022, accused 1 at 0153 Hours Kshs 80,000/= was transferred from the deceased's M-pesa account No. 0725819009 to Accused 1's M-pesa Account No. 0724376448 and then there was another transaction of Kshs 80,000/= was transferred at 0156 Hours. He said that a 3rd transaction of Kshs 10,000 was

done at 0158Hours and the 4th transaction of Kshs 2000/= at 0207Hours making a total of Kshs.172,000/=.

25. He said after the team from the region coordinated by regional committee Mr. Meli and DCI Mr. Ngetich accompanied by Sgt. Rotich and P.C Kimetto proceeded again to Sirwo and accused 1 Christopher accused 1, accused 3 Julius Kiprotich Koskei who was also an employee of the deceased in a separate parcel of land about 3kilometres away and Accused 2 Paul Wekesa Wanjala who was employed by a neighbouring were arrested and upon arrest, 4phones were recovered from them being:-

- i. The 1st Phone for accused 1 a smart Phone Tecno Imei No.351764303204784 which was parked and paired with another sim line Imei No.351764303204794. He produced the exhibit in court which was marked as Exhibit 9a.
- ii. Phone for accused 1 smart Phone make Imei No.864119052264689 make D-Light M200. He produced the same and it was marked as Exhibit 9(b).
- iii. Deceased's phone inpaired by simline 0725819009 Make Itel Imei No.35462744159612 marked as Exhibit 9 (c).
- iv. Itel Phone for 3rd Accused Julius Kiprotich Kosgei. The phone did not have a battery and Imei No. was not visible marked Exhibit 9(d).

26. He said upon order issued in miscellaneous application mpesa statement were issued by Safaricom; that they got M-

mpesa statements of accused 1 which confirmed that he had received Kshs.172,000/= and deceased's mpesa statements marked MFI 10 showing transfers made from her M-pesa account to Accused 1's M-pesa account. He said they got M-pesa statements of accused 2 and Accused 3 but did not have a lot of money. He said M-pesa statement of Accused 1 covered 1st January,2022 to 30th July,2022 and the transactions relevant to this case were done on 8th July,2022 starting from 0153hours to 0207hours. That the period of the statement of the deceased is the same period of 1st January,2022 to 30th July,2022. He produced the miscellaneous application and order and the same were marked Exhibits 10 (c) and 10(d).

27. He said when they interrogated Accused 1, he said he had committed the offence alongside his neighbour A2 and he them back to Sirwo where they arrested Accused 2. He said from his investigations, he found that Accused had been a frequent customer to the residence of the deceased to buy tobacco and on the night the deceased died, Accused 2 acknowledged having bought tobacco at around 11:30p.m. He said Accused 1 said he murdered the deceased together with Accused 2 and then carried the body to where it was found. He further stated that while recording Accused 1's statement at the police station Accused 1 mentioned that he had collaborated who worked in a neighbor's home 3 kilometers away and he had been arrested with accused 1

by the team from Nakuru. That upon analyzing communication data by intelligence bureau Nakuru, they found that Accused 4 had prolonged communication with Accused 1 on the day the deceased was killed.

28. He said when they first visited the scene, accused 1 was so composed and they did not suspect him at the time. He said exhibit memo form in respect of phones recovered were sent to cybercrime at DCI Headquarters Exhibit 8b and the purpose was for retrieval of the incoming and outgoing messages from the phones and after analysis of Accused 1's phone Exhibit 8(a), the text messages from M-pesa transactions were captured.

29. He said together with Pc Kimetto they attended postmortem conducted on the body of the deceased on the 15th July,2022 in the presence of deceased's relatives and the doctor concluded that the cause of death was code dissection with acute head injury. He identified the items recovered being a blanket, bedsheet with feaces, Duvet and Gloves.

30. PW 12 Edwin Kipkemoi Cheruiyot a law enforcement liason officer with Safaricom testified that his responsibility includes data extraction and that on the 22nd September,2022, they received court order from Eldama Ravine requesting Safaricom to extract M-pesa statement in respect of mobile No.0724376448.He said they complied and

extracted M-pesa statements and the name of the registered person is Christopher Shivachi ID no. 27165795. He said the statements were for period 1st January,2022 to 30th July,2022. He produced the statement as exhibit 9(a), court order marked 9(b) and certificate under section 65 and 106(a) and (b) of the evidence act marked Exhibit 9 (c).

31. PW 13 Paul Ouko Abuto who works with National Registration Bureau as deputy director in-charge of legal section testified that they received a request to authenticate 7 identity cards with numbers hereunder:-

- i. 32705174
- ii. 27165795
- iii. 12937534
- iv. 29704101
- v. 21985476
- vi. 30265844
- vii. 11873540

32. He said they conducted a search from their data base and found that the records were genuine. They attached identification reports from their data base. That they attached the 7 identification reports though he had four with him. That the reports are:-

- i. ID 27165795 belongs to Christopher Shivaji who was born on 6th September,1988.

- ii. ID 12937534 belongs to Julius Kiprotich Koskei born in 1974.
 - iii. ID 29704101 belongs to Andrew Chirchir Serгон born on 19th October,1991
 - iv. ID 32705174 belongs to Paul Wanjala Wekesa Born on 1st February,1995. He produced the reports and the letter as exhibits in court.
33. Upon the closure of the prosecution case, by ruling delivered on the 13th day of March,2025, the court found that a prima facie case had been established to warrant the accused persons be placed on their defence in accordance with Section 306(2) of the criminal procedure code.

ACCUSED'S DEFENCE CASE

34. Accused 1 Christopher Shivaji testified as DW 1. He stated that his home is Bungoma and that he was working at Kapchorwa Mogotio as a shamba boy for Elijah. He denied killing the deceased. He said on 7th July,2022, he was with the deceased in the compound as he worked the deceased was also doing her work. He said after 3p.m, he milked cows and took milk to her and went to continue working upto 6:30p.m when he locked cattle and fetched water to take bath. He said that the deceased used to cook and eat in her house while he ate where he stayed. He stated that 9P.M, he went to the house of deceased's son to watch television and at 11P.M, he realized the deceased phone was charging

where he was watching TV and at 1:30 a.m/2P.M, he remembered the deceased had requested him to buy her credit from her M-Pesa and saw her Pin number and it remained in his mind. he then took the deceased's mobile phone and transferred money to his number and after sending money to his line, he went to sleep and left the phone there and at 5:00a.m,told him she was going her Kapken farm to check work and told him where his tea was. He said at around 5.30/6.00 a.m he found thermos outside near the door and on looking at the gate, he saw her lesa as she crossed to the road. He said he took tea into the house and went to milk cattle then took milk to the kitchen and thereafter took a panga and went to cut nappier grass. He said that he did not have a key to her main house

35. He said after milking and taking tea to the kitchen, he went to drink tea and at around 8.30 a.m while taking tea, Accused 3 who worked at Kapken arrived. He said he inquired from Accused 3 if he met the deceased on the way but Accused 3 told him he did not meet her. He said while taking tea with Accused 3, he tried calling the deceased 3 times but she did not pick her calls and after 15 minutes Accused 3 decided to go back. He said that at 3/4p.m, a neighbor when to ask him where the deceased was then informed him that a woman had been found dead in a thicket. He said he gave the neighbor milk and went to the scene and found big crowd and on moving close to where

the deceased was, he saw a red t-shirt written Jubilee. Moved closer and identified the deceased as his employer. He said Accused 3 informed police where the deceased used to keep the keys and the house was opened. He said the deceased was buried on 28th July,2022 and at 10a.m, DCI Mogotio went and inquired whether he was Shivaji and requested him to take them to where the body was recovered.

36. He said together with Accused 3 and Accused 4, they were asked to board police vehicle and were taken to the police station. He said they had taken his phone from the house and they were placed in the cell and their phones were taken. He said he was shocked to hear investigations officer say that he jointly killed the deceased with accused 2.
37. He said he has not committed an offence before and that he sent money to himself because he has a wife and 3 children and they are poor. He said that his house was almost falling and he was being paid Kshs.5,000/= He said that he sent Kshs.172,000/= to his mobile phone but he denied killing the deceased. He said that he did not know what killed the deceased and that he only made a mistake by sending her money to himself.
38. Accused testified as Andrew Chirchir DW2. He testified that he is a resident of Kapchorwa village and was teaching

at Kapsok Primary school at the time he was arrested. He denied killing the deceased whom she knew as they were neighbours. He said on 7th July,2022 at 9 p.m., he was thirsty for tobacco and he went to the deceased's house at 9:00p.m, and called the deceased who gave him tobacco and he gave her Kshs.20 since he had her debt of Kshs,10. He said that it was not his first time to go to her house to buy tobacco. He said Accused 3 introduced him to the deceased and he was used to buy tobacco from her. He said that she had locked the house and he called her twice and she opened the door. He said after buying tobacco, he went to his house to sleep and woke up at 6:00a.m.

39. That the next day on the 8th July,2022 at 7.00 a.m he went towards Kapsok to look for busaa and met Accused 3going to Kapsok and his trouser was with dew and he inquired from him why and he said he passed through the forest and he was going to the deceased's home. He said that he went to 2 houses drinking busaa and busaa got finished at noon and that he met Nixon Mutai who informed him that he had money and he was going to buy for him busaa. He said he used to buy for him and they went to another home in Kapchorwa to buy 2nd generation alcohol.

40. Dw2 testified that at 4P.m, he saw people crowded who include nyumba kumi members at a cliff and on inquiring, he was told a person had been found dead. He said he tried looking but he could not identify and he left for home. He

said that he was arrested on 30th July,2022 and that accused 1 had borrowed 1,000/= from him and he thought he was arrested because of the money or buying tobacco. He said that he had borrowed from him that month and he had not known him very much. That a neighbour informed him that the 1st accused had money and he may have won sport-pesa. He said that he was not involved in the killing of the deceased.

41. DW3 Julius Kiprotich Kosgei a resident of Timboroa Mumberes testified that he was employed by deceased's daughter and he started working for the deceased from 2018 at Kapkein farm. He said worked there for 8 months then he was transferred to her daughter Valentine at Tonyok where he worked there up to 2021 then he was returned to Kachorwa after which he was moved from Kapkein to Kapchorwa. He said that he stayed with the deceased from 2021 up to 2022 and when Accused 1 arrived, he was taken back to Kapkein where he was doing farm work. He said that from Kapchorwa to Kakein is about 4 kilometers and that he was living at Kapkein and would go to Kapchorwa and go back in the evening.

42. He said that the deceased's nephew was at Kapkein and on 7th July,2022 he was at Kapkein with the deceased's nephew called Kipkorir. He said that he was last with the deceased on 3rd July,2022 and the deceased was to go to her daughter in Toniok to bring a maid and she was to take nails

to him for fencing. He said he was waiting for her on the 7th July,2022 but she did not go to kipkein and she went to Kapchorwa to check on her on 8th July,202 at 8:00a.m.

43. He said at Kapchorwa he found the deceased's house closed while accused 1's house was open and that Accused 1 asked he met the deceased on the way and Accused 1 tried to call the deceased as they took tea after which Accused 1 went to the farm as he remained and at 9.00a.m, he went to inform accused 1 that he was going and went to Kapkein but did not find the deceased and the next day, while at the centre, he met Aron Kipterer who informed him to go to Kachorwa as something had happened.

44. He said he went to Kapchorwa with Kipkorir and while on the way, they were informed that Kogo had died and he was arrested on 28th July,2022. He said that he did not disagree with the deceased for the period he worked for her and that he did not kill the deceased. That his phone was not working and he had given to the deceased to repair for him and did not have a mobile phone at the time the deceased died. He said on 25th July,2022, accused 1 sold to him Itel mobile phone which police took and the phone he had given the deceased has not been returned and they do not know the person whom she had given to repair.

45. DW 4 Paul Wekesa a resident of Kamnyonyi Eldama Ravine where he is a shamba boy testified that he did not know the deceased and did not kill her. He said he was

working for Birir at Kapchorwa taking care of the farm and cattle and the farm is about 1kilometer from where Accused 1 worked. He said that he met the 1st accused at Kapchorwa centre and he heard people say he was a luhya. He said he visited accused 1 once on 25th July,2022 and since his phone was not working, he requested Accused 1 if he had a mobile phone to sell and he said he was going to inquire from his boss' daughter who had a small phone and that he spoke to the lady who agreed to sell the phone at Kshs.1000 but he informed her that he had Kshs.600 and he was going to look for more money and buy the phone. He said that he was arrested on 28th July,2022 and before then, he had his phone.

46. Accused 4 said he spoke to Accused 1 for the first time on 20th July,2022 the again on 25th July,2022 and that he did not send him any money and he did not know why he was arrested. He denied the charges and said that he had not seen the deceased. He said that the police have not produced call data showing that he spoke to the accused on 7th July,2022.

DEFENCE'S SUBMISSIONS

47. The defence counsel filed submissions on behalf of accused persons. Counsel submit that the death of deceased is not disputed as witnesses who included her husband pw5 confirmed she died and identified the body to the Doctor

PW7. The 1st accused also identified the deceased body at the scene as that of his employer.

48. Counsel further submitted that PW7 testified that he examined the body of the deceased on 15th July 2022 at Mercy Mission Hospital Eldama Ravine and found that he had injuries around the face, a blood clot around the eyes, displaced fracture around the face and a neck subluxation at C2 and C3. That he concluded that the cause of death was code dissection with acute head injury following a fall and on cross examination he reiterated that the deceased had a displaced fracture of the skull just above the right eye and a cut on the spinal code and he concluded that the injury could have been caused by a fall because the head was hit first.

49. That from the aforesaid evidence it is manifestly clear that the deceased died as a result of code dissection due to a fall. They submit that the deceased's body was found in a steep cliff with her biker pulled up to her knees which appeared like she had gone for a long call of nature and accidentally fell down the steep cliff thereby sustaining the injuries alluded to by the Doctor who did not state that the deceased died as a result of strangulation and /or being hit by a blunt object hence the deceased demise cannot be attributed to the accused.

50. That to make matters worse the doctor did not indicate the time of her demise using scientific evidence in terms of

the contents of her stomach and /or state whether the injuries on the face and eyes were inflicted after her demise so as to corroborate PW11 allegations that the deceased was killed in her house and carried to the cliff.

51. That it is common knowledge that a body cannot bleed after death but in the instant case, the eyes had blood bleeding which is an indication that the deceased was a life at the time she fell over the cliff while taking along call of nature.
52. That the 1st accused has corroborated this contention, when he stated in his defence that on 8th July 2022, very early in the morning, the deceased had called and informed him that she was going to her other farm at Kapkein and had left his tea at the door.
53. That further, the aforesaid evidence of the 1st accused was corroborated by the evidence of the 3rd accused who stated that he was expecting the deceased that morning at Kapkein and when she did not turn up, he went to Kapchorwa to find out why she did not go to Kapkein but did not find her at Kapchorwa.
54. They therefore contend that the deceased was a life on the morning of 8th August 2022, and her demise was accidental. That furthermore, it is apparent that the demise of the deceased was treated as an accident and

investigation only begun after her burial on 28th August 2022, after PW5 pressured the police to review the case leading to the allegations by PW10 and 11 that the 1st accused had admitted that he killed the deceased in collaboration with the 2nd and 3rd accused.

55. That it is instructive to note that by the time the matter was being reviewed by the police, PW7 had carried out the postmortem and came to that conclusion that the deceased had died as a result of code dissection due to a fall. That the body was never exhumed to carry out a 2nd postmortem to determine the cause of death. It is therefore their humble submission that the deceased's cause of death has not been conclusively determined and hence what is before the court are mere assumptions that the 1st accused killed the deceased in collaboration with the other accused due to transfer of money from the deceased phone to his phone.

56. On whether the accused committed the unlawful act which caused the death of the deceased, they state that they shall address this issue in respect of the 1st accused separately and the 2nd, 3rd and the 4th accused cumulatively owing to the nature of evidence presented against each of the accused.

57. That as regard the 2nd, 3rd and 4th accused, they submit that they did not participate in any way either through commission and/or omission leading to the demise of the

deceased and in essence they did not cause the demise of the deceased and/or murder her.

58. That their presence in this case is due to allegations by PW10 and 11 that the 1st accused admitted that he murdered the deceased in corroboration with the 2nd and 3rd accused persons, while the 4th accused person was charged for allegedly speaking with the 1st accused person on the day the deceased is alleged to have been murdered yet it has not been determined when the deceased was murdered. That PW11 has expressly admitted that he preferred charges against the 2nd, 3rd and 4th accused pursuant to the admission of the 1st accused that he killed the deceased with their assistance.

59. That the 2nd accused is a neighbour of the deceased and on the night of 7th July 2022 at a bout 9pm, he had gone to the deceased house to buy Tabaco and after purchase he left. That the information about the visit to the deceased house by the 2nd accused was provided by the accused himself. That however, PW11 capriciously attempted to connect him to the crime by shifting the time of his visit to the deceased house from 9pm to 11.30 pm so as to bring it closer to the transaction of the 1st accused of 1.53 pm and 2pm.

60. They submit that PW5 and PW8, the widower and the son of the deceased have confirmed in their evidence that

the deceased was a business lady and executed her business at home as she did not have a shop and therefore the 2nd accused visit to her house at 9pm was not out of the ordinary at any rate he was her neighbour.

61. That the allegation by PW10 and 11 that the 1st accused admitted that he killed the deceased in collaboration with the 2nd accused is also unfounded in that there is no evidence that the 1st accused transferred any money to him for the act and/or even communicated with him through phone. That he was simply arrested and charged with murder for visiting his neighbour to buy tobacco which is normal in a village set up like in the present case.
62. That his evidence on oath was not controverted by the prosecution and infact, his evidence was to the effect that he was a friend of the deceased and had assisted her in preparing Busaa for her farm workers hence he had no motive to kill her and/or participate in her killing.
63. That at any rate, the alleged admission by the 1st accused was never made before an officer of the court and/or produce to enable them text it in cross examination hence it remains an allegation by the prosecution.
64. They submit that the 3rd accused also did not cause the death of the deceased and he was simply arrested and

charged on the allegation that the 1st accused had admitted that he participated in the murder.

65. That the 3rd accused had been an employee of the deceased for 3 years, at Kapchorwa and was moved to Kapkein when the 1st accused was employed which is a distance of about 3km from Kapchorwa. That there is no evidence that they had issues with the deceased and it would appear that he was a good employee and on one occasion the deceased had send him to work for her daughter for one year before recalling him.
66. That on the material day that is 7th July 2022, he had spent his night at Kapkein as he was expecting the deceased on 8th July 2022 in the morning and when she failed to turn up, he went to Kapchorwa to find out why she had not come and he found the 1st accused milking cows and he informed him that the deceased had left for Kapkein in the morning.
67. That he was then offered tea made by the deceased and thereafter he left for Kapkien. That this evidence was not controverted by the prosecutions and there is no scintilla of evidence linking him to the murder save for the allegation by PW10 and 11 that the 1st accused had admitted killing the deceased in corroboration with him.
68. That Ksh. 1000/= send to Pw2 by the 1st accused for the consumption of alcohol by the 3rd accused cannot be proof of

connection to the murder in that the 1st accused had also sent money to family members of the deceased in PW8 and her sister under the guise that he had won a jackpot through Betika hence the 3rd accused cannot be accused of partaking from the proceed of crime when the children of the deceased also benefited. That it is their contention, that the prosecution of the 3rd accused was ill advised.

69. That the 4th accused's arrest and subsequent prosecution was unlawfully, illegal and wrongful in that there no shred of evidence linking him to the murder of the deceased save for the allegation by PW11 that he had a lengthy call with the 1st accused on the day of the murder yet it has not been determined conclusively the time and date of the demise of the deceased.

70. That further, it cannot be assumed without any cogent evidence linking him to the murder that just because he received a call from the 1st accused then he is an accomplice.

71. That the 4th accused has explained cogently that his communication with the 1st accused was in respect of a phone he intended to purchase from the deceased's daughter and he actually met her and inspected the phone. That however, he did not like and further, there is no evidence that the 1st accused send him any money and/or text alluding to the murder, hence he was simply profiled.

72. That as regards the 1st accused they contend that he did not cause the death of the deceased. That they have explained herein above in issue that the deceased cause of death has not been conclusively proved due to the explanation they have rendered herein above.
73. That further, PW7 determined that the deceased demise was caused by code dissection due to a fall. That they have demonstrated that the deceased was alive until the morning of 8th July 2022 and that her death was a result of an accident.
74. That the prosecution has hinged their case on the contention that just because the 1st accused transferred funds from the deceased phone to his phone between 1.53AM and 2.05 Am then he must have committed the murder. That in essence the circumstantial evidence presented per se cannot be said to be prove of the murder.
75. They submit that there were no murder weapon and /or finger prints produced linking the 1st accused to the murder and at any rate the alleged faeces on the blanket and foot print on the mattress cover was never subjected to any forensic examination to determine the owner of the foot print and/or faeces.

76. That the prosecution ran a narrative that the deceased was strangled hence the presence of the faeces, but the Doctor's findings disproves this contention in that she died from a code dissection which cannot be equated to strangulation.
77. That the 1st accused has explained how he came into possession of the deceased funds, in that he had crammed the deceased pin number and when she charged her phone in her son's house overnight, he sneaked in and transferred the funds to his phone. It is their contention that had the 1st accused killed the deceased he would not have remained around after her demise.
78. On whether the accused had the malice aforethought, mens rea and/or the intention to kill, they submit that they have demonstrated herein above that the 2nd, 3rd and 4th accused persons did not participate in the alleged murder of the deceased and consequently, there can never be any mens rea attributed to them.
79. That as regard the 1st accused, contention by the prosecution that he murdered the deceased so as to steal her money is unfounded in that it has not been proved what caused her demise and at any rate, looking at the overall evidence and taking into account simple scientific facts it is clear that the deceased was a life on the morning of 8th July

2022 and accidentally fell over a cliff which caused her demise.

80. They therefore submit that the prosecution has not proved their case beyond reasonable doubt to warrant conviction of the accused and urge the court to acquit them under Section 215 of the CPC for insufficient evidence.

ANALYSIS AND DETERMINATION

81. The accused persons were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Section 203 provides:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

82. From this provision, the prosecution must prove the following three elements beyond reasonable doubt:-

1. That the deceased is died;
2. That the death was caused by an unlawful act or omission by the accused persons;
3. That the accused acted with malice aforethought.

83. I will now address each of these elements.

(i) Whether the Deceased Died

84. The death of the deceased, Jane Chemutai, is not in dispute. Prosecution witnesses PW1, PW4, PW5, PW6, PW7, PW9, and PW11 confirmed that the deceased was found dead on 8th July 2022. PW7, Dr. Kibet Kimwei, conducted a postmortem on 15th July 2022 at Mercy Mission Hospital. He observed facial injuries, periorbital blood clots, a displaced facial fracture, and a neck break subluxation at C2-C3. He concluded that the cause of death was **acute head injury due to dissection**, consistent with trauma.

85. The postmortem report was produced as **Exhibit 4**. This ingredient of the offence is therefore proved.

(ii) Whether the Accused Persons Inflicted the Fatal Injuries

86. In the absence of any eyewitness to the fatal act, the prosecution relied on **circumstantial evidence** to link the accused persons to the offence.

The Law on Circumstantial Evidence

87. Circumstantial evidence, though indirect, can sustain a conviction if it satisfies certain legal thresholds. As the Court of Appeal held in **Sawe v. Republic [2003] KLR 364**:-

“In order to justify a conviction based on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of

explanation upon any other reasonable hypothesis than that of guilt.”

88. Similarly, in **Kipkering Arap Koske & Another [1949] 16 EACA 135**, the former Court of Appeal for Eastern Africa held that:-

“The burden of proving facts that justify the inference of guilt, to the exclusion of any reasonable hypothesis of innocence, rests on the prosecution and never shifts.”

89. From evidence adduced, PW11 (the investigating officer) and PW12 testified that Accused 1 was employed by the deceased and resided at her homestead. On the night of the incident, between 0153 and 0207 hours, Kshs.172,000/= was transferred from the deceased’s phone to Accused 1’s phone. This was confirmed by phone data analysis and admitted by Accused 1 in his defence, though he denied involvement in the murder. Upon visiting the scene, investigators observed disturbed beddings, human faeces on the bedding, and mud footprints—signs of a struggle inside the deceased's room.

90. The investigating officer also testified that Accused 1, during interrogation, implicated Accused 2 and 3 in the plan to kill the deceased and dump her body. The money trail showed that Accused 1 sent part of the money to Accused 2.

91. Accused 2 was seen at the deceased's home the following morning. Accused 3, who claimed he regularly visited the deceased to buy tobacco, admitted being at her home that night and again early the next morning—despite living some distance away.

92. All these strands of evidence—including the admissions, location of the body, the money trail, and the disturbed state of the bedroom—form a **tight chain of circumstantial evidence** pointing irresistibly to the joint participation of Accused 1, 2, and 3 in the murder.

93. As for Accused 4, although he communicated with Accused 1 that night, the prosecution failed to produce any evidence linking him to the deceased's home or showing that the communication related to the murder. The chain of circumstantial evidence does not extend to Accused 4. From the foregoing, the second ingredient of the offence is proved only against Accused 1, 2, and 3.

(iii) Whether Malice Aforethought Was Established

94. Malice aforethought is defined under **Section 206 of the Penal Code** and includes:-

- Intent to cause death or grievous harm;

- Knowledge that the act or omission will probably cause death or grievous harm, regardless of whether such outcome is desired;
- Intent to commit a felony.

95. In **Nzuki v. Republic [1993] KLR 171**, the Court of Appeal held that malice aforethought may be inferred where an act is committed deliberately with the intention to kill or cause grievous harm.

96. From evidence adduced, the severity of the deceased's injuries—particularly the deliberate targeting of the face and cervical spine—demonstrates a clear intent to inflict fatal harm. The attack was not random or accidental. It was directed, sustained, and executed in a manner likely to cause death.

97. Moreover, the fact that the accused persons killed the deceased and then proceeded to transfer substantial sums of money from her mobile phone, and reportedly consumed illicit alcohol using those funds, indicates a **premeditated and coordinated plan**.

98. The evidence supports the conclusion that the accused acted with **malice aforethought as defined in Section 206(b)**: they knew their actions would probably cause death or grievous harm, and proceeded with indifference to the

outcome. From the foregoing, this ingredient is therefore proved beyond reasonable doubt.

99. From the foregoing, I find that the prosecution has proved all the three ingredients of the offence of murder beyond reasonable doubt against Accused 1, 2, and 3. And not against Accused 4,

100. **FINAL ORDERS:-**

- a) Accused 1, 2, and 3 are hereby found guilty and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
- b) Accused 4 is acquitted and shall be set at liberty forthwith, unless otherwise lawfully held.
- c) Right of appeal explained — 14 days.

Judgment delivered, dated and signed virtually at Kabarnet this **31st Day of July 2025.**



.....
RACHEL NGETICH
JUDGE

In the presence of:

- CA Karanja.
- Ms. Omari for state.

- Mr. Chebii for all accused Persons.
- A1present.
- A2present.
- A3 Present.
- A4 present.

ORIGINAL