



**Republic v Kipimbar & another (Criminal Case 50 of 2023)
[2025] KEHC 11362 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 50 OF 2023
RB NGETICH, J
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CHRISTOPHER KIPIMBAR 1ST ACCUSED

JOSEPH CHERUIYOT 2ND ACCUSED

JUDGMENT

1. The accused persons Christopher Kipimbar and Joseph Cheruiyot 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 were that the accused persons on diverse dates between 21st September,2012 and 24th September,2012 at Oldebes area in Mogotio Sub- County within Baringo County, jointly with others not before court murdered Kipruto Arap Ngetuny.
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. PW 1 Daudi Terit Chepkurgo testified that he resides at Oldebes and that on the 22nd September,2012 at about 9:30 a.m, he had gone to visit Nickson Chergok and while there, an old lady one Sokome Rutto to look for the husband Kipruto arap Ngetuny who had gone to the said home on 21st September,2012 to repair a door. Pw1 said he informed her that he had seen her husband at Wilson Kipsaina's hotel at the centre of Oldebes and that he was drunk and theft left the old lady at the said home and went to a Centre which is 50metres from the home and while resting in the home which is adjacent to the Centre, the old lady Sokome arrived and told him she was going to Kipsaina's hotel to inquire about her husband.



4. Pw1 said that after a short while, the old lady went back to where he was and told him that she had been informed that her husband left the hotel in the evening of 21st September, 2012 on his way home and on 24th September, 2012 at 8.15 a.m, a neighbour informed him that the wife of Arap Ngetuny was requesting for help to look for her husband Kipruto arap Ngetuny and he accompanied them to Oldebes centre where they found a group of people Arap Ngetuny and they went to a shamba where one Henry Kurere told them that on Sunday 23rd September, 2012, they had gone to scare monkeys from the shamba and they experienced a foul smell but did not know where it came from. They were led to the area at a hill and they saw the body of Kipruto arap Ngetuny confirmed by his son Charles Maritim. He said at the scene there was a huge tree and deceased's legs were on the tree and beside the body was a bag and stick. That there was also a hammer and a rader inside the bag which also contained 'kimera' used for preparing alcohol Busaa and the deceased's son identified the items as belonging to the deceased.
5. He testified that the body was decomposing and he was able to see an injury on the neck which had fully decomposed and they went back to the chief who went to the scene where many people had gathered and examined the body. He said members of public had suspected the deceased's 2 sons Erick Rutto and Charles because they had been arguing about land. That the chief called the police who came and they visited the scene, then took the body to mortuary.
6. Pw1 further stated that on 31st October, 2012, they received information from the deceased's son Charles Maritim that accused 1 Christopher Kipimbar had gone to a person called Kirwa Kiptui (Lokiki) and confessed to the killing the deceased. He said that he called police at Kisanana AP Post, they went to the home of Joseph Cheruiyot and arrested him who said Eric Rutto had given him Kshs.2500 to kill his father the deceased herein Kipruto Arap Ngetuny. He the deceased's son Eric Ruto had been arrested but was later released. He said Accused 1 and 2 are his neighbors.
7. PW 2 No.233250 PC Charles Kipyegon currently attached to Busia Police station testified that on 1st November, 2012 at around 2:00 a.m, he was called by CPI Daniel Mbugua to his office where he found Sgt Kimulwa with 3 other people namely James Kurere, Kipkorir Changwony and Charles Maritim who stated that the person who killed Ruto arap Ngetuny were at Endebes and had been arrested by members of public. He said that together with APC Kassim Mohamid and Hamisi Walter accompanied them to Endebes and on reaching there, they found one young man seated down surrounded by members of public. He said the person was Christopher Kipimbar accused 1 herein. He said they interrogated him and confessed that he had killed Ruto arap Ngetuny with Luka Epur Ebei and that they were hired to kill by Joseph Kiptoo Cheruiyot accused 2 herein. He said that they were taken to where Joseph Kiptoo Cheruiyot was and they arrested him. He further stated the Accused Joseph Kiptoo Cheruiyot informed them that he was given 2,500/= by deceased's son Erick Rutto to kill his father Ruto arap Ngetuny. They went to arrest Lucas Apur Ebei and then went back to the camp and handed over the three suspects to the officer in charge Sgt. Kimulwa and were taken to police station.
8. PW3 John Kaptoi testified that on 8th October, 2012, he was at his home when at around 2/ 3pm, accused 1 Christopher Kipimbar went to where he was working and told him that together with a Turkana called Lepei they had killed Arap Ngetuny and he wanted Pw3 to give him traditional medicine but pw3 told him medicine and after leaving, did not have traditional medicine .Pw3 went to report to the village elder Eric Kipkech and then to the chief. He said that Accused 1 informed him that they had been paid Kshs 18,000 by Accused 2 to kill the deceased. Pw3 said Accused 1 did not inform the date they killed the deceased herein and that Joseph is his uncle whom they live together in the same village.



9. PW 4 Larry Kurere testified that he lives in Endebes and that he is a herder at Kitieny's farm. He said in September, 2012, at around 6 p.m, he was from the farm heading home when he met Accused and Yebei on the road and that they requested him to show them his boss Kitieny. He said that he met them on the road when he talked with Christopher and Yebei who requested him to show them Yebei's boss Kitieny.
10. He said that Yebei entered Korma's land while Christopher proceeded home and after one year he learnt from kipkemoi that Christopher had been arrested. He said Christopher killed arap Ngetuny but he did not see him kill. He said he found Christopher having been arrested.
11. He said they went to Accused 2 and upon being arrested he said Eric son of the deceased gave him 2500/= to kill the deceased and then they went to arrest Yebei from his home. He said Accused 1 and 2 talked voluntarily
12. PW 5 Jackson Kimetto a resident of Endebes and a farmer testified that on 22nd September, 2012, he was at home when the deceased's wife informed them that her husband had disappeared. He said people gathered and started looking for him and he was found at the valley though he was not present when the deceased was found.
13. He confirmed that the deceased's body had started decomposing and they called the chief to collect the body and when went to the centre he found the deceased's bicycle in an incomplete building near the kiosk and the bicycle was taken by deceased's family after 2 days. He said that he used to leave the bicycle there whenever it rained but he was not present when the deceased left the bicycle since he had closed the kiosk and that he found the bicycle in the morning. Pw5 said he last saw the deceased on the 17th September, 2012.
14. PW 6 Francis Kandie a resident of Endebes testified that on the 14th October, 2012, he was at his home where alcoholic drink busaa was being sold and at 2: 30p.m, accused 1 and Yebei were in his house and continued taking busaa up to 6P.M, when Yebei received a call on his phone and went aside to receive the call and returned. He said Accused 1 asked him who was calling and he responded that it was Accused 2 calling who was inquiring where they were and they left after receiving the call. Pw6 further stated that on 15th October, 2012, while at the centre, he was informed that the two people Accused1 and Yebei who had who had gone to his house are the ones who killed the deceased. He however denied seeing them kill the deceased.
15. PW 7 Silvester Changwony a resident of Oldebes and a brother to the deceased is his brother testified that on 22nd September, 2012, he was called by the deceased's son Eric informing him that the deceased had disappeared. He said the deceased had another parcel of land in Solai and that he used to go to his house in Solai whenever he disagreed with his sons.
16. He further stated that on 24th September, 2012, at 3.p.m, the deceased's Eric called him and informed him that they had found his father at the valley. He went there and found decomposed body of the deceased which was removed by police. He said deceased's work tools being a panga, fermented flour, walking stick were placed near his head. He said deceased's son Eric used to disagree with his father over land and at some point, Eric was chased by his father and mother.
17. PW8 Sogome Kipruto a resident of Eldebes who worked in a flower farm in Naivasha before she retired testified the deceased herein Arap Ngeny was her husband and on 18th September, 2012, her husband was killed. She said that the accused who was a contractor of houses went to work but he did not return and the next day she went look for him where he had gone to build a house in the neighborhood which was about 1kilometre away but found his bicycle at a neighbor called Kimetto and after getting the



- bicycle, she went back home. She said her husband was found by her neighbor's children in Mogurin hanging on a tree with his leg was up held by a tree and head facing down. She said that the body had decomposed and the neck had turned facing back.
18. Pw8 said it was her stepson Eric who killed the deceased. She said the deceased had two wives herself and the first wife Tarkok who is Eric's mother. She said Eric is sick and that he had conflict with the deceased over land. She said Erick could not come to court as he was unable to walk due to sickness.
 19. PW9 James Loiso Kurere a resident of Oldebes Mogotio testified that on 22nd September,2012 at around 6.00 a.m., Sogome (PW8) who is his aunt went to his home looking for the deceased who had been away from home for 2 days. He said the next day in the evening, young boys who had gone hunting went to report that there was bad smell at the hill. The next morning 24th September 2012, the deceased's son Eric Ruto called a neighbor Moskoi to go and assist him look for the deceased. He said he met them on the way and asked them to check the hill where there was report of bad smell and upon searching, they found decomposed body on stone with his legs hanging facing up.
 20. They went to call PW 8 and her children and the chief was also called and he called police who came for the body. He said that on 31st October,2012, Charles Rutto came to Oldebes and said that it was Christopher Yebei and Joseph who killed the deceased saying he went for cleansing ceremony at the home of one called Lokiki to cleanse them. That Lokiki's sister is married by son of the deceased. That Christopher was at Oldebes centre and he together with Charles, Nicholas Kipkorir and a neighbour went to look for him and found Christopher who was at Kipkemoi Kombich watching football. He said that they informed him that they wanted to ask him some things on Oldebes and they went together to Oldebes where he was interrogated by Nicholas and Muskoi and Christopher agreed that they killed the deceased after being contracted by Joseph who gave them Kshs.2500/=. That Christopher said that they strangled after holding the deceased and Yebei hanged him. That he said Joseph paid them Kshs.2500/=.
 21. He said that the police were called and he repeated what he had said to the police and they left Endebes with police to where Accused 2 lives and they found him and that Accused 2 told the deceased's son Eric Ruto gave him Kshs. 2500. They went for Ayabei and Eric who were both arrested. He said the 4 suspects arrested were taken to Kisanana police station but Yebei and Eric are not before court.
 22. PW 10 was Simon Moskoi a resident Oldebes testified that on the 30th October,2012, he was in a hotel at Oldebes when Accused 1 arrived while drunk and created disturbance in the hotel.pw10 requested him not to disturb customers and he left. He said the next day he met Accused and together with 7 other people they asked Accused 1 why he created disturbance in the hotel and Accused told them that he created disturbance in the hotel because he thought he was suspected. He said he remained with Accused 1 and Nicholas Changwony and continued talking to him and Accused1 confirmed to them that what he had said was true; that he confirmed that together with Yebei, they killed the deceased herein Mzee Arap Ngetuny because the deceased was disturbing his son Eric Ruto and that Eric had given Joseph Kshs.2,000 which he gave him together with Yebei.Pw10 said they called AP from Kisanana who arrived and together they went to Joseph's house at about 11p.m.
 23. He said Accused 2 first denied that he gave them money but later admitted that he gave Accused 1 Kshs.2500/= who took 500/= and gave Yebei 2,000/=. pw10 said Accused 2 informed the Eric told him the deceased had disturbed him so much and that accused 1 and Yebei planned the killing; and as they went back other people went with the police to Mugurine to arrest Yebei. He said accused 1 and accused 2 confessed voluntarily.
 24. PW 11 Wilson Kiprotich Kipsaina a resident of Oldebes testified that on the 21st September,2012 at around 6p.m the deceased Kipruto Arap Ngetuny who appeared a bit drunk went to his hotel and



- took tea and chapati and after about two days, the deceased's wife went to his hotel asking for him; and after 2 days, he learnt that the deceased's body was found in a valley and he went to see the body which appeared decomposed .
25. PW12 Kipkorir Changkwony a resident of Oldebes testified that on the 31st October, 2020 testified that at 7 p.m, he met Charles Kipruto who informed that his had been killed and Accused 1 was suspected to have killed him and together with Charles and James Loisok they went to Kisanana where they found Christopher at home of Patrick Kombich and they requested him to accompany them to Oldebes though they did not in from him why they wanted him to accompany them and on reaching there together with pw10 they inquired from him about the death of the deceased Ngetuny and he confessed to have killed the deceased together with Yebei by strangling. Pw12 said accused 1 informed him that he killed the deceased with Yebei because the deceased had shot his father with an arrow. He said that police from Kisanana were called and Dausi Chepkurkor also arrived as they were interrogating Christopher, where he interrogated Christopher again and he repeated what he had said. He said that when the police arrived, they continued to interrogate Christopher and he mentioned Joseph and Yebei as having killed with him and the three of them were arrested. He said that Accused 1. He said at the time Accused 2 was arrested from his home, he had police uniform in his home and police shoes black in colour.
 26. PW 13 Doctor Joseph Kangor testified that he performed postmortem examination on the body of Ruto Arap Ngetuny at Nakuru municipal mortuary on the 28th September, 2012 and his findings were that the body was decomposed, the head was detached from the trunk (below the skull), the arm was detached from the shoulder and skull fractured. He concluded that the cause of death was head injury due to skull fracture. He produced the postmortem report as exhibit 1.
 27. Upon close of the prosecution case, by ruling delivered on the 13th day of March, 2025, the court having considered the evidence adduced by the 13 prosecution witnesses found 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

28. Accused 1 Christopher Kipimbar testified as DW 1. He gave a sworn statement. He testified that he resides at Oldebes and that he did not kill the deceased and he did not know anything about the deceased. That between 21st September, 2012 and 24th September, 2012, he was at home at Oldebes and he said that he did not know anything about the allegations of money given to him to kill the deceased and he denied being given money to kill the deceased. He said he know accused 2 but who lives far from him and that he was not with accused 2 between 21st September, 2012 and 24th September, 2012. He said that he forgives the witnesses who lied against him and that he did not know pw2 Charles Kipyegon and that the witnesses who testified against him lied.
29. Accused 2 Joseph Cheruiyot testified as DW 2. He testified that he resides at Oldebes Location and denied jointly killing the deceased with the 1st accused. He stated that between 21st and 24th September, 2012, he was in his home doing his casual work and on a date he cannot recall between 21st and 24th September, 2012, he was going to fetch water from a dam near the deceased's home when he inquired what was wrong and he was informed that there was an old man who had disappeared and a young man sensed smell in a hill near the deceased's home and they went to the hill to check and confirmed that it was the body of the deceased and they then went back to inform the family then called police who arrived and took the body. He said that they did contribution to assist the family in burying the deceased and after the funeral they stayed for almost a month and he was later arrested from his home. He said he was beaten and he lost consciousness and was later taken to Kisanana.



30. Accused2 said he was injured and punished and when he inquired why, he was informed that he was involved in the death of the deceased. He confirmed that he knew the deceased Eric Ruto and denied being given Kshs 2500/= by Eric Ruto to kill the deceased herein. He said that he did not know the deceased was killed. He said that he went to the scene but he did not reach the exact place and denied knowing Lucas Yebei. He said the witness who said that he confessed that he killed the deceased jointly with the 1st accused lied to court.

Accused's Submissions

31. The accused persons submit that they wish to adopt mutatis mutandis' the submissions filed herein and dated 19th February, 2025. In submissions dated 19th February,2025 the accused persons submit that the murder was caused by people who have not been pointed out by the prosecution witnesses and evidence of pw13 is at variance with the doctor's evidence in that the doctor informed court that cause of death was "fall from a height/cliff, head injury, skull fracture since the body had been found down".
32. They submit that the doctor was unable to tell the cause of the detachment of the deceased's head. Detachment was not due to a sharp object according to the doctor. That no evidence was led by the prosecution to show that Accused 1 and 2 caused the injuries disclosed by the doctor.
33. They submit that evidence adduced is circumstantial as none of the witnesses says anything that is direct and there is no eye witness evidence. That no evidence has been led by the prosecution to link A1,2 with the murder of the deceased herein. They submit that there must be a continuous or unbroken chain of evidence and all the elements making up the unbroken chain of evidence must be adduced by the prosecution. That the evidence so produced circumstantially must link Accused 1 and 2 to the commission of the murder and relied on the case of Kipkering Arap Koske & Another (1949)16 EACH. 135.
34. Further that the prosecution evidence does not place Accused 1 and 2 at the center of the murder. That PW1 says that those who were hired to kill the deceased were Al Christopher Kipimbar and Lucas yebei but there is no proof as no one saw then commit the murder and the evidence is therefore hearsay. Further that PW2 says Lucas Yebei committed the murder and ran away and Eric Rutto is said to have hired people to murder his father but there is no proof that he gave money to Accused 2 to A2 to deliver to Accused 1 and if Accused 1 received any such money which is denied, no one Accused 1 and 2 commit the murder and PW 4,5,6,7,8,9,10,11,12,13 all say they did not know how the deceased died.
35. Further that the evidence of PW8, Sogome Kiprono is of importance as stated that the deceased was killed by Eric Rutto, her own step- son. That PW 13 the doctor says cause of death was, fall from a height/cliff, head injury/skull fractures since the body had been found down. That the evidence of PW8 and that of all the other witnesses absolves the accused A1,2 from the murder scene.
36. On the purported 'Confession', they submit that PW2 says that him and other officers went to where Accused was and he admitted he murdered the deceased. That he was given cash of Kshs. 2000/= by A2 to commit the murder and PW3 said that Accused1 told him that "I have killed Ruto Arap Ngetuny" and that he killed him with Lucas Ebei committed the murder. Further PW10 says, "when we questioned Al, he said that him (Al) and Lucas Ebei killed the deceased". The accused persons submit that all these do not meet the requirements of a confession as enshrined in the Evidence Act Under Section 25A of the Evidence Act.
37. On the issue of money changing hands, they submit that Witnesses said Eric Rutto gave cash to A2 to deliver to those assigned to kill the deceased but witnesses say Kshs. 18,000/=, Kshs. 2,500/=, Kshs. 1,200/= (PW2,3,4,10) and the witnesses therefore said varying amounts.



38. Further that some of the witnesses were not called; that Lucas Ebei is mentioned directly by several witnesses pw3,4,9 10 that he killed the deceased with Al and Eric Rutto is mentioned by several witnesses more especially PW 8, his step -mother as the one who gave out the money for killing the deceased. That Charles Kiplagat is another witness mentioned but all were mentioned in the prosecution's case but were not called to testify because their evidence for fear that their evidence would have been adverse to the prosecution.
39. They further submit that the cause of death was not established as the doctor PW13 says death was a result of a fall from a height/cliff head injury/skull fracture since the body had been found down. That the doctor could not explain how and what detached the head of the deceased from the trunk, the left arm from the shoulder of the deceased. That he was unable to tell the cause of the detachment and what may have caused the fall from height or cliff hence the medical evidence is therefore inconclusive.
40. Further it is doubtful if postmortem was done as almost all witnesses said they did not attend or know of any post-mortem having been done at Nakuru Municipal mortuary but the doctor says he did it on 28th September, 2012 and he admitted that the report he presented before court did not have page 1 and no explanation was given for this.
41. They submit that a public inquest is said to have been done but its outcome was never disclosed or availed to this Honourable Court and the defence counsels. That whenever a public inquest is done, it presupposes that the person(s) or cause of death of a death of a deceased person(s) is not known and this makes the defence wonder on what basis the accused herein were arrested and charged.
42. Further that the witnesses said Eric Rutto paid money for killing the deceased but it has not been proved by evidence that any one witness was present and saw the money change hands either from Eric Rutto to A2 or from A2 to Al or Lucas Ebei and the prosecution did not put this clear as it should be.
43. Further that the prosecution evidence is riddled with very many contradictions; the date of death is unknown and witnesses refer to different dates. That some witnesses say the deceased was murdered while the doctor confirms he fell from a height/cliff. That PW8 says deceased was strangled by Eric Rutto. They submit that the prosecution has not demonstrated cause of death; that some witnesses say body was found in the valley while others say it was found in his farm.
44. In conclusion the accused persons submit that evidence of PW8 one Sogome Kipruto tells a different story in that ERIC RUTTO murdered the deceased and not Al, 2 and DW2 informed court that Eric Ruto died recently; that PW8 had informed court that he was sick and could not walk and the prosecution did not tell court why he was not arrested and charged for paying people to kill his father.

Analysis and Determination

45. The accused faces a charge of murder contrary to Section 203 of the [Penal Code](#). Under that section murder is defined as follows:

"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."
46. The ingredients for the offence of murder are well settled. The prosecution has to establish that the deceased died due to an unlawful act or omission on the part of the accused. Secondly, the prosecution must prove that at the time the accused committed the unlawful act or omission, he had formed the intention to cause death or grievous harm on the deceased. Thirdly, the prosecution must establish that the accused action caused the death of the deceased.



47. In view of the above, I have considered evidence adduced by the 13 prosecution witnesses and accused persons' defence together with submissions filed by defence counsel and wish to consider the following issues: -
- i. Whether the deceased died.
 - ii. Whether the accused person inflicted the injuries that caused the deceased death.
 - iii. Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.

(i) Proof that the deceased died

48. The prosecution evidence on this ingredient was mainly based on the evidence of PW 1, PW 2, PW 3, PW 4, PW 5, PW 6, PW 7, PW8, PW9 and PW13 said that the deceased left home on the 21st September, 2012 to a neighbour's home where he had gone to build a house and never returned home that day and after a thorough search, his body was found on the 24th September, 2012 decomposing in a cliff. PW 13 Doctor Joseph Kangor who said that he did postmortem on the body of Ruto Arap Ngetuny at Nakuru municipal mortuary on the 28th September, 2012 and his findings were that the body was decomposed.
49. That the findings were that the head was detached from the trunk (below the skull), the arm was detached from the shoulder and skull fractured. That the conclusion was that the cause of death was head injury because of skull fracture. That from the report, the body was found down a cliff. He produced the postmortem report as exhibit 1.

(ii) Whether the accused person inflicted the injuries that caused the deceased death.

50. From the evidence tendered before court it is clear that the evidence linking the accused to the murder was that of PW 1 and PW 3. PW 3 stated that the 1st accused visited for traditional medicine because he had killed the deceased. Pw3 informed authorities which led to the arrest of the 1st accused. Upon being interrogated, accused 1 admitted having killed the deceased with one Ebei upon being given by Accused 2 who was given the money by deceased's son Eric Ruto who was said to be sickly during hearing and had died at the time of defence hearing. deceased with one yebei after being given money by the 2nd accused. From the foregoing, there is no doubt that there is circumstantial evidence linking accused1 and 2 to the death of the deceased. Accused's 2's role was to pay killers money given to him by deceased's son Eric and Accused 1 was paid together with Ebei to kill the deceased.

(iii) Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought

51. Malice aforethought is provided for under Section 206 of the [Penal Code](#). It may be established by way of evidence when any of the following circumstances exist:
- “(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 death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.



- (c) An intention to commit a felony; and
- (d) An intention to facilitate the escape from custody of or the flight of any person who has committed a felony or attempted it.”

52. In the case of *Nzuki V Rep* 1993 KLR 171 the learned Judges of Appeal set out the principles of determining whether intention to commit murder is proved as follows:

- “1. Malice aforethought is a term of art and is either an express intention to kill or implied where by a voluntary act by a person intending to cause grievous bodily harm to his victim and the victim died as the result.
2. Before an act can be murder, it must be aimed at someone and must be an act committed with one of the following intentions
- (a) To cause death;
 - (b) Cause grievous bodily harm; and
 - (c) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits these acts deliberately.
3. Without an intention of one of these three types, the mere fact that the accused’s conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder.
4. ...
5. ...

53. In the cited case of *Nzuki*, supra, the Court of Appeal held that even though the appellant’s conduct was done with the knowledge that the action is likely or highly likely to cause death or grievous harm, that in itself is not enough if there is no evidence to establish that the accused had formed an intention to cause death or to cause grievous harm, or knew his conduct may cause serious harm or death but committed the act deliberately any way.

54. The injuries inflicted on the deceased were very severe. The acts of the accused as evidenced from the prosecution witnesses and the postmortem report is evidence of malice. It is clear the intention the accused had in this attack was to cause the deceased death. The choice of where they aimed and severely injured the deceased are indicative of one bent on inflicting maximum harm or death on his victim.

55. The accused targeted the parts of the body that are very delicate and could easily lead to death, all establish that the accused had premeditated their actions.

56. From the foregoing, malice aforethought under Section 206 (b) of the *Penal Code* was proved. The accused’s conduct and the circumstances of this case taken together are consistent with persons whose actions were actuated by malice.

57. I find that the prosecution has proved the charge of murder contrary to Section 203 of the *Penal Code* as against the accused person beyond any reasonable doubt. Consequently, the accused ought to be found guilty of the offence of murder as charged and accordingly be convicted.

58. Final orders: -



- a. Accused 1 and 2 are jointly convicted for the offence of murder contrary to section 203 as read with section 204 of the penal code.
- b. Right of appeal 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. Wanjir for A1.

Mr. Miyienda for A2.

A1 Present.

A2 present.

