



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Maingi (Criminal Case E015 of 2020)
[2025] KEHC 11591 (KLR) (1 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E015 OF 2020**

**TM MATHEKA, J
AUGUST 1, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ERIC MUTUMA MAINGI ACCUSED

JUDGMENT

1. Eric Mutuma Maingi is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that on the night of 6th & 7th December, 2020, in Njoro Subcounty Nakuru County, jointly with others not before court he murdered Eunice Njeri Muthoni.
3. He took plea on 24/3/2021. He pleaded not guilty. The prosecution was represented by Ms. Murunga, and Mr. Mugambi appeared for the accused. The court was told prosecution would call 21 witnesses.
4. PW1 the mother to Eunice Njeri Muthoni (deceased) Elizabeth Muthami Nyawira told the court about the happenings of 6/12/2020. She told the court how Njeri called her on a different phone and requested her to call her on her own phone.
5. She said when she called Njeri's phone, it was answered by a man who told her that he was waiting for the owner of the phone to call him so that he would tell her where he was. He told her where he was. She said she would not recall now where he said he was but she rang Njeri and told her where that person who had her phone was. She also said she told Njeri to go there.
6. She said she asked Njeri why she had not made the call herself. Njeri told her that at that time she did not have her phone. That she had dropped her phone when she was buying medicine and that the settings on her phone were such that calls would be diverted to her (PW1's) phone.



7. Shortly afterwards Njeri called her and told her that she had gone and collected her phone from that person and had to pay him Kshs. 200.
8. That Njeri told her she would not come home because they were starting exam's that Monday.
9. She testified further how on the Tuesday she learnt about Njeri's death, and she travelled to Nakuru to where Njeri lived. She was taken to the mortuary and later attended the postmortem. She added that Njeri was a student. She was living with her friends one of whom was Diana (PW2) she wondered why Diana did not tell her that Njeri was missing. This is because she learnt about Njeri's death through phone calls of other persons who were looking for her because she was mteja and had not shown up for her exams.
10. She added that her daughter used to cry a lot. That there was a time she had a boyfriend and they broke up. She asked her whether she was pregnant, and she said no. She testified that she encouraged her not to worry as she would get another person.
11. On cross-examination she told the court she could not remember the name of the person who called her number to speak to Njeri - but she said the police said it was one Tamar . She also said that the person who had found Njeri's phone was asking for Kshs. 3,000. She said she was calling Njeri with Njeri's number which she could not recall.
12. She also said that the call she received on 9/12/2020 was from a girl who said she was in Nairobi.
13. She said while Njeri was in college she had some issues and she - PW1 had taken her for counseling. She said she was told it was about her relationship with her boyfriend. She said at the postmortem she was told that her daughter was strangled.
14. There was controversy around the testimony of PW2 - Diana Njeri Githoni. The defence alleged that she was in a marital relationship with the accused and could not be compelled to testify against the accused person. The state submitted that there was no marriage and that the witness had come to testify voluntarily. The objection was overruled because other than the allegation of marriage - nothing was placed before court to prove the same.
15. PW2 Diana Njeri Githoni testified that both the accused and the deceased were known to her. She and the deceased were classmates having met 2018 in Egerton University. She met the accused in 2015 and they began a relationship between 2016 – 2017.
16. She gave the history of these relation relationships and how they were tied to this case. She told the court that when she came to Egerton she was living alone at Jacaranda, and the deceased who she referred to as Eunice was living at the school hostel. She later moved to the block where Diana and her friend Tarmar lived. According to Diana, Eunice moved because she did not have friends where she was living before. When she moved to their block they began to cook together, and to share house chores. At the time Erick the accused would visit her (Diana) once in a while.
17. Diana conceived Eric's child in early 2020. When Corona came and school stopped, she decided not to go home because she did not want her parents to know she was pregnant. She remained with Njeri. She decided to move to a bigger house to a place called Ngondu. Eric also came because her due date was approaching - so she was now living with Eric. Soon thereafter Eunice also moved from her place in Jacaranda and came to live with her so they were now living together Diana , Eunice and Eric.
18. At some point Eunice moved out into what was a vacant bedsitter apartment at Ngondu where they were living.



19. By 4/12/2020, Diana already had her baby. On that date she was attending her uncle's funeral in Olkalau. She was to go with Eunice but it is around this time that Eunice had lost her phone and so she opted to remain behind. Diana and Tarmac went for the Funeral.
20. According to Diana when she came back she noted that Eunice was uncomfortable. The next day 5/12/2020 Eunice told her that Eric had made sexual advances to her when she had left for the funeral.
21. On hearing this, Diana decided to call Eric who had left for Nakuru . Apparently, Diana and Eric shared phones and at that time Diana sim's card was in Eric's phone so, she borrowed Njeri's phone and rang Eric. Her testimony was that Eric laughed it off and said he had done nothing like that. Diana who had gone outside the house to call Eric came back inside and told Njeri that they would settle the issue when Eric came back.
22. However, Diana was affected by these allegations and that she told Njeri to cook from her own house. That she would call Njeri to come back as soon as Eric returned because Eric would not deny the issue in her presence.
23. When Eric came back, Diana called Njeri, and asked Eric about the issue. Diana testified that Eric denied the issue saying that those were allegations. He became angry and things almost turned physical. She sent Njeri away telling her that they would settle the issue the later.
24. Diana testified that the 6/12/2020 was her birthday. Tamar collected the cooking gas from Njeri's house and went to make pancakes. When breakfast was ready Njeri did not come to eat and Diana sent for her. She came, ate breakfast, wished Diana happy birthday and left.
25. Diana told the court that Njeri came for lunch. Tamar was also present. Around this time Eric wanted to leave for Nakuru – but Diana did not want him to leave before they settled the issue. She hid his phone so that he would not leave .

However, Eric took the Kabambe phone and left her in the bedroom. When she saw that he was l, she went to the living room and left Tamar with her baby and followed Eric outside. She said she had heard Eric calling Njeri outside. When she followed them outside, she met Njeri coming back. She told the court, she took Njeri and they went to Eric, and she told Njeri to remind Eric of what he had done. Diana told the court that Njeri told Eric that he knew the truth, that she had spoken her truth. Eric left while she and Njeri went back inside.
26. She testified that she went back to the house crying and went directly to her bedroom. That Tamar came to check on her and she told Tamar what was going on. She then took the phone and went outside to call Eric using the line for the phone he had carried with him. She demanded from him that he tell her the truth, or she would tell his mother. She told the court that Eric admitted that he had made some comments to Njeri asking her 'kama hakuambiwa achunge bwana' She demanded to know from him why he had been lying - he apologized and told her they would settle later.
27. She went back inside and the three herself, Tamar and Njeri were having lunch. Njeri texted her (Diana) asking that they talk outside. When they went outside Njeri asked Diana whether she had done wrong to report to her what had transpired in her absence. Diana told the court she told her that is what a true friend would do. She also told the court that that was the final exam week That Njeri told her she was feeling overwhelmed because of the situation and that . she wanted to apply for special exams. Diana told the court that she told Njeri there was no need to be stressed and that it was best that she sit her exams and finish school. Njeri left for house as Diana went back inside. Two friends Juliet and Kemunto came to visit. Njeri came later asking for her earphones. Asked where she was going, she simply stated - somewhere. Tamar asked her for her house keys so that she could pick the big sufuria



for preparing supper. Njeri handed over her keys and left. They stayed with the friends till 8:00pm. When the two left. She and Tamar discussed the Njeri Eric Issue. Diana testified that she told Tamar that she thought Njeri was speaking the truth and that Eric was defensive.

28. Diana further told the court that Eric came back home after curfew time - 1000pm and he was drunk. Tamar left. There was still tension. She went to sleep. She gave him back his phone. He stepped out to make a phone call as there was no network on in the house. She said she never heard him come to the bed. That she did not know whether he slept in the house but when she woke up, he was in the bed.
29. She told the court that when she woke up, she began to make breakfast. She called Njeri on phone but it was not going through. She asked Tamar who told her that she had also tried but the call to Njeri's phone was not going through.
30. Diana testified that she and Eric discussed the issue. He told her that when Njeri was playing with the baby she bent to pick the baby displaying her breasts and that to him was seduction. Diana told the court she told him she did not want to hear the story again.
31. When Njeri did not show up for breakfast or pick her phone she got the keys from Tamar and went to her house – Njeri was not in. She testified that she told Tamar that Njeri had gone home because she Njeri, had told her she wanted to apply for special exams.
32. Diana testified further that on 8/12/2020 they had a group assignment: her, Njeri, Mercy and another. That Njeri and her had been sent the question by the lecturer. She wanted to do the assignment but was alarmed by an alert she found on WhatsApp about a missing student at Egerton. She testified that she went to Tamar and told her that they should call a few of Njeri's friends and her mum to see if Njeri was at home. She told Tamar to call Njeri's mother on her (Tamar's phone) because she , Diana did not want to raise alarm as it was possible Njeri could be with her friends. When Njeri's mum was called she said Njeri was not at home. Diana said she called a mutual friend by the name Caleb and told him she did not know where Njeri was. She said Caleb told her that they wait till the next day as they had an exam at 8:00am.
33. Diana told the court that when went to sit her exam on 9/12/2020 Njeri was not there. She told her friends that they needed to report that Njeri was missing .
34. She testified that on her way home from school, near her house she overheard one man and two women talking about a dead body found in the river. She decided to go to check on school face book/ WhatsApp groups to see if such a matter had been posted. When she found nothing, she decided to go and ask the man she had overheard talking to the two women. She found the man. She asked him – and he told her it was a lady. She asked him how the lady looked like , he told her that she had black and white braids and that people were saying that the lady had thrown herself into the river.

Diana told the court that she immediately called Eric and told him that Njeri had committed suicide. It was Diana's further evidence that she called other friends and told them what she had heard about Njeri.
35. When she got to the house the care taker Laban, heard the commotion in their house and he went and told them that the body that had been picked was in grey tights, bluish jumper . That there was a bag and sports shoes on the side.
36. She testified that she sent Eric, Tamar, Emma, Saddam and Caretaker Laban to go and confirm at the Morgue whether it was Njeri, while she remained with her baby in the house.
37. Diana testified further that Eric, Tamar, Emma, Saddam and Caretaker Laban came back an hour later and confirmed that the body that was recovered was that of Njeri. The College security called for Njeri's



documents and told her not to tell Njeri's mother as the school would call her. She was also called by the school security to go and record a statement. She told the court that Eric told her not to mention the issue of the alleged sexual advances he had made to Njeri. Later police officers from Njoro Police station came and searched their house and told them to go record statements.

She told the court that on 11/12/2020 she learnt from Eric that the postmortem result showed that Njeri had been strangled. On Friday Eric left because he had a VISA Interview.

Diana told the court that she suspected Eric to have done the thing because according to her he was very angry with Njeri over the issue and that on the material night he came home very drunk. - and she even asked Tamar if she thought Eric could do such a thing. She testified that Tamar's response was that she did not think that Eric could do such a thing. She testified that she, Tamar and Eric were arrested in February, 2021 over the death of Njeri and they were held in custody for 14 days. She recorded a further statement on 6/12/2020 regarding her sim card for no. XXXXXXXXXX which she had inserted in Eric's phone make Infinix explaining that she had done so to use the internet. She said Eric had left with the phone that had both their sim cards.

38. On cross-exam by Mr. Mugambi, she told the court that she met Eric towards the end of 2015. That she was in 1st year when Eric was in 4th year and that Tamar joined university the year after her. She said she joined Njeri's class in 2018. That Eric joined their circle in 2020. That at the time she met Eric at Eric he did not know Njeri.
39. She testified that she was friends with Njeri and Tamar because they lived in same apartments but separately and shared meals by contributing money for food and cooking together and sharing meals. That Eric joined their circle in July, 2020, and her child was born on 13/9/2020. That her relationship with Eric was good, and her child was named after Eric's father. She confirmed that they were not formally married.
40. Asked about the events of 4/12/2020 - she said she went to the funeral with Tamar leaving Eric with the baby - but when she came home about 800pm she found Njeri in her house - She said she did not know when Njeri joined them. She said that Njeri appeared uncomfortable, was not as talkative as she normally was. She did not report anything untoward that evening, and after supper Njeri and Tamar left for their houses. She confirmed that Eric did not go out that day.
41. That on 5/12/2020 Njeri had breakfast with them and it is on the afternoon that she told her about the advances Eric had made to her. Diana told the court that Njeri told her that Eric had pulled her towards the bedroom while asking her whether she had not been told to take care of the husband. That she told Eric she did not want that. That she did not tell her how she escaped from Eric's hands.
That night she cooked dinner at her place and Diana went to collect it from there.
That night Eric came home about 1000 pm drunk- he used to come home late.
42. That on 6/12/2020 Diana had breakfast with Tamar, Njeri was absent and Diana sent for her as she was aware of the issue between Njeri and Eric and Njeri came for breakfast past 1000am. When Njeri came Eric was in the bedroom. Diana said they did not meet. That Njeri left and came later for lunch by which time Eric had left. She stayed and left between 4 and 500pm. She did not say exactly where she was going. She just said she was going. She just said she was going and that is last time she saw Njeri alive.
43. She testified further that Eric had left the house at 2.00pm and lunch was between 3.00-4.00pm. That before Eric left, he called Njeri outside and Diana joined them. That when Njeri it was two hours after Eric had left. She did not know where either of them went



44. Eric came back after 10:00pm. She said this was not unusual. He found her with Tamara who left for her house while she left Eric in the sitting room and went to sleep while in bed, she heard the door being opened but she did not see him leave. She said she fell asleep about 11:00pm and did not hear him get into bed but found him in bed went to her in the morning. That the baby usually slept in the middle. She also said that it is the baby who woke her up between 3- 4.00am and that is when she saw Eric.
45. On further cross-exam she told the court that when Eric stopped out, he was on phone. He was speaking on the Infinix phone. She explained that the Infinix phone had 2 lines - one hers the other Eric's. That the phone was in her possession the whole day - and when Eric came home after 1000pm, she saw him step out talking on this phone. She said she did not hear who he was talking to. When it was put to her that no calls were made from the Infinix phone that night – she said she did not know.
46. On further cross-exam her statement was put to her and she confirmed that Njeri told her she was stressed and could not concentrate enough to sit the final exams. That Diana told her that it was she who ought to have been stressed, cautioned that Njeri risked going back to depression, and convinced her not postpone sitting the exam.
47. She confirmed that in her statement she told the police that when the story of the missing person broke out, she started scrolling the internet to see whether such a story was tending. She found none. She also stated that when she heard that the body that was found was that of a girl with black and white braids, she concluded that it was Njeri who had committed suicide She confirmed that she was aware that Njeri suffered from depression due to issues related to trauma she suffered from mistreatment by the aunt who had raised her. That she was the one who called the mother of Njeri in 2019 when she noticed that Njeri was crying a lot. Njeri's mother intervened and Njeri was able to start therapy.
48. Dian further told the court that Njeri was in the process of healing but was still erratic in her behavior, she was moody, and would sometimes keep to herself and even skipped a CAT (Continuous Assessment Test)
49. She told the court that there was no problem between here and Njeri over his boyfriend issue - that she told Njeri to cook in her house because she knew Njeri would be uncomfortable around Eric, that she Diana had no reason to be jealous because Njeri had not shown any interest in Eric. She said she could not tell whether Eric had any reason to hurt Njeri.
50. Tamar Wambora Njeru was PW3. She told the court that she knew Diana 2017, Njeri in in October, 2018 and Eric in 2019.
51. According to her on 4/12/2020 when they left for Diana's uncle's funeral, they left Eric and Njeri in the house. That they left Njeri behind because of the baby. When they returned that evening, they had supper together as usual and everything was ok.
52. She told the court that on 5/12/2020 around 12 noon her friends Boaz, Kirimi and Juliet came and they left for the bouncing castles leaving behind Diana Eric and Njeri. at home. They came back around 6.00pm. That day unlike other days Njeri cooked dinner at her place – she found it unusual because they normally cooked and Diana's place. She said she found this odd.
53. On 6th December 2020 it was Diana's birthday. She cooked pancakes for Diana. On checking her phone, she saw that Njeri had texted her asking for her milk. She did not take the milk but went to Njeri's house. She testified that she noticed that Njeri had opened her anxiety pills, something she had not done in a long time. Upon going to Diana's, she told her about Njeri's anxiety pills. Njeri joined them for breakfast. Eric was in the bedroom



54. Later in the day Tamara and Njeri went and bought pork for lunch which Tamara cooked. In the process Diana went outside and came back crying. She was out there with Eric. Njeri followed her to the bedroom. They were in there for a while. Njeri came out. Tamara went in and spoke to Diana who told her about what had happened on the 4th December 2020. That Eric had tried to approach Njeri.
55. Tamara said that Eric had a conversation with Njeri outside, and then Eric left. She said Njeri left later at about 4:30pm. She identified the bag that Njeri had when she left.
56. On 9th December 2020 she learnt that Njeri had died. She, was in the house with Eric when Diana called and told them about Njeri's death. She later went to the morgue with the others and confirmed that it was Njeri. She said that after the postmortem Eric told them that Njeri had been strangled.
57. She told the court that on the 4th of December 2020. She and Diana left the baby with Eric. At that time. Uh, Eunice had lost her phone. That on the 6th of December 2020 she went to fetch Njeri from her house and found that she had opened her anxiety pills bottle. They had breakfast together and Eric was around. But he remained in the bedroom, and Njeri came in at around 10:00 AM. He told the court that she was aware Njeri was having some mental health issues. And that she had been going for therapy from September 2020.
58. He said that around 2:30 PM. Eric left the house. and had a conversation for about 15 minutes outside the house with Njeri. That Diana joined them outside and stayed for about 5 minutes. Eric did not come back to the house. She confirmed that it was her Diana, Kimmie and Juliet who were the last persons to be with Njeri before she died. Confirmed that it was not in her statement that Eric told her that Njeri had been strangled.
59. PW4 Duncan Kimani Wambua, told the court that. He was a farmer in Njoro. On the 7th of December 2020 around 9:00 AM. He went to irrigate vegetables using a pump and pipes. he would pump the water from the nearby river. He went into a nearby thicket to relieve himself. Before he could start, he saw the body of a person in the water. He saw hair floating in the water. He immediately decided to go and inform his father, who was a member of Nyumba Kumi. On his way, he met Thuku regret vegetables and drew his attention to what he had seen. His father. Joseph Nthiwa Wambua came to this scene. And PW4 left when his father was calling the chief. He identified the black bag he had seen at the scene. He said his home was about 100 meters from the scene and if anyone had screamed, they would have heard from home. Cross examination, he said the body was in the liver, the face was in the water. And the body was floating. He said the only thing he saw was the bag and did not check the same because he was in shock.
60. PW5 Stephen Mwangi Maina assistant Chief Kikapu sub location, the call from Joseph Wambua of Nyumba kumi telling him that there had been an incident at the river near his home. He accompanied Joseph to the scene, which was at River Subuku around 30 meters from the road. He saw a monkey bag, an empty plastic juice bottle and an empty bottle of Napoleon spirits. There was also one black sports shoe. He rang the officer commanding Station Njoro. 45 minutes later, the police came. The body was removed from the river. But no one from the crowd that had formed was able to identify the person. The police took away the body and on 9th February, the assistant chief recorded his statement
61. PW6. NO. 235224. Chief Inspector Simon Kamore Wahome testified that on the 18th February 2020. He was requested By Inspector Kamau meant a scene at Mwariki in Nakuru, which was the rental House of 1 Eric Maingi Mutuma. He went to the scene and 43 photographs which he summarized into eight sets.
62. These were the general view and entrance to the rental house, the general view inside the house, close up views of 872 Safaricom SIM cards found in the bedroom parked in different packages, 6 phones,



one Sony digital camera. Three laptops, close-up close-up Views of identification documents of Eric Maingi Mutuma and Diana Njeri Muthomi, general view of Eric Maingi Mutuma, close up views of the right and left hands of Mr. Eric Maingi Mutuma, close up views of healed wounds at the back of both hands of Mr. Eric Maingi Mutuma. He produced the certificate dated 19th November 2021 and the photographs. He also produced 10 photographs at the request of the investigation officer PC Romana Odour related to the homicide scene in Njoro area.

63. On cross examination, he testified that. Eric's house was treated as a scene of crime. That he took the photos of Eric's hands and the instructions of the investigation officer. He was interested in the scars. And that Eric did not tell him where the scars were from. That he knew the offense facing the accused was Murder. But he did not know whether he had been charged with respect to the SIM cards.
64. Pw7 Laban Miatu Maina told the court that he was the care take o the 51 units of rentals, among his tenants were Diana and Eric in room 8 Njeri lived in a bed sitter . on 7h December 2020 he heard that there was a body in the river. He was among the people who went there . he saw the body, the bottles and the bag. On 10th he heard students saying that Njeri had left on the Sunday and had not returned . when they described how she was dressed when she left and her hair, he told them that the description fitted the person he had seen. He accompanied them to the mortuary, he Sadam, Eric , Tamar and others. They were advised by the mortuary attendant that if the body was that of their friend, they were not to call her parents but to leave it to the dean to whom they were to report. It turned out that the body was Njeri's . They went to her house retrieved her IDs and reported to the dean. A counsellor came to the plot and spoke to the students. That night he received a call from Njeri's mother. He took her to Njeri's house , and to the scene where the body was found. He accompanied her to DCI where they were given two officers who accompanied them to, her mortuary where she identified her daughter's body. He testified that the postmortem revealed that Njeri had been strangled. The body was released to the mother.
65. On 11th December 2020, Diana told him she was feeling insecure and she moved out. He said Eric had already moved out. On cross examination he said that Diana and Eric moved out but when they were moving her things, she was alone.
66. PW8 no. 110280 PC Stephen Ruto told the court that he learnt about the scene of suspected drowning at Ngondu on 7th December 2020 from the OCS Njoro police station. Accompanied by other officers they went to the scene. He said there was a bridge, and down the bridge there was a body of a young lady in the water, in a pool of water, face down. There were two empty bottles, one of minute maid juice, the other Napoleon spirits, black monkey bag. They took the body out. It had no visible bruises. He took photos with his phone.
67. That it was in February 2021 that he learnt that the scene he had visited was not a drowning scene but a murder scene.
68. On cross examination he told the court that when they recovered the body, he did not see any bruises and concluded that it was a drowning case. That he learnt three months later that it was not a drowning scene but a murder scene. He said that he did not attend the postmortem.
69. PW9 Dr. Wangari Wambugu was the pathologist who conducted the postmortem on 10th December 2020 at Egerton University Mortuary.
70. On external examination the body had bruises on the forehead , hemorrhage into the left eye.
71. Internally she found on the neck intra muscular hemorrhage into the superficial and deep muscles of the neck @ the level of the mid neck around the thyroid bruising of the tissues , muscles around the



left upper part of the neck , bleeding into the thyroid gland , bleeding in the muscles around the spine in the neck area; lungs did not have excessive fluid, bruising of inner scalp of the forehead . she formed the opinion that cause of death was neck compression due to blunt force trauma to the neck consistent with strangulation resulting from assault.

72. Pw9 Number 76478 Sergeant Joshua Tobolei told the court that he was assigned to investigate a death incident reported as a drowning incident at Njoro . Police station on 10th of December 2020. he accompanied the mother of the deceased, one Elizabeth Muthoni, to the Egerton University Mortuary where she identified the body of Eunice Njeri. He said the postmortem confirmed that the deceased had died due to strangulation and he decided to revisit the scene where the body was collected from, Ngondu, about 5 kilometers from the Egerton University. His view was that the volume of the water was too low for one to drown.
73. PW9 Edwin Kipkemoi Cheruiyot the Liaison Officer, Safaricom PLC, Rift Valley Region. Told the court that he received a court order. To produce call data records. On behalf of the DCI Njoro for mobile numbers XXXXXXXXXX and 0112379006, MPESA statements for XXXXXXXXXX,XXXXXXXX and XXXXXXXXXX.
74. Formed that mobile number XXXXXXXXXX was registered under Eric Maingi. That on the 6th December 2020 at 2101 hours the location was at Egerton. December 2020. Around 0836. The location was at Njoro Canning. IMEI of the handset was 15163000585600.
75. The other number was XXXXXXXXXX registered under Diana Njeri. The IMEI was the same meaning it was the same handset. On 6th December 2020 from 2038 hours to 7th December 2020, 1241 hours she was using her line in the handset.
76. The mobile number for Eunice Muthoni was XXXXXXXXXX. The last transaction on 6th December 2020 was at 1837 hours at Belbur within Njoro Cluster. Around 1811 hours the line was used to make MPESA payments to merchant number 5066839 Loice Muthoni Kimondo of Shillings 400, at 1814 hours, Kenya Shillings 50 to a merchant number 746-5147. Regina Murugi Kiragu.
77. Produced the COAL data, records and certificates as exhibit no 9,10, 11, a, b , c, and 12 respectively.
78. On cross examination he was asked whether the number registered under Eric Maingi was in communication with the other numbers on the 6th and 7th December 2020. His response was that the request was to make to produce MPESA records and call data records. That there was no request. To show whether there was communication among the numbers. He told the court that they did not analyze the data, they only extracted the data. Asked whether the three numbers with respect to this case were at any one time on the material dates in one place, he told the court that. Yes, there was indication from the data. That the number belonging to unis. Was within Egerton around 1811 hours on the 6th of December. The number belonging to Diana. From 2038 hours was Rubin Egerton. Njoro all through to 2327. At Njoro Kenyatta, the number belonging to Eric was within Egerton at 2101 hours. He confirmed that Safaricom could only pick location during communication.
79. PW11 Jacob Chelimo. Registered Clinical Officer, Njoro SUB County Hospital testified that on 24th February 2021, Eric Maingi Mutuma, a murder suspect. Was brought to the facility for examination. He found him in fair general condition. And on the upper limbs, on the hands, he found bruises on the right upper wrist, the right posterior arm, approximately 2 months old caused by a blunt object. He filled the P3 on the 24th February 2021 and produced it as. Prosecution exhibit #13.
80. Examination. He told the court that Eric was brought to him so that he could examine whether he had injuries on his body. Because he was a murder suspect. He was told that the offence was committed in December 2020. And conceded that he aligned the edge of the injuries to the dates given to him by the



DCI. He confirmed that the DCI had given him a suspect, had given him the history of the offense and following the history given to him and the dates in the P3. He arrived at his conclusion that the injuries were two months old. Asked what formula he used to arrive at that conclusion, his response was that the healing process of the scars is what guided him, together with his eyes and his experience. He said on observation the injuries were still fresh. Injuries had been incurred recently. Asked whether he had treated the Eric, he said that. Uh, no. He had observed that the injuries had already healed. In the same breath, he said they were still fresh. Under examination, he was asked what specifically helped him to know that the injuries were two months old. His response was that they were still fresh.

81. PW12 number 237692 Inspector Peter Kamau. Was attached to DCI Headquarters Homicide Investigations at the material time. He told the court that on 2nd February 2021, he was summoned by his in charge, the Director homicide to lead the investigation team of himself, PC Romana Odour and PC Daniel Macharia, into the murder of Eunice Muthoni.
82. He took over from Sergeant Joshua Tobolei who briefed them that the deceased went missing on the 6th December 2020 and the body was discovered dumped in River Subuku on the 7th December 2020. The postmortem had already been done. And the exhibits had already been retrieved. View The scene at the river was a secondary scene.
83. He proceeded to conduct investigations establish the relationship between the deceased and Diana, Eric and Tamar.
84. He said that from the call data the number XXXXXXXXXX. Visited the general area of the secondary scene on the night of 6th December 2020. That the phone had visited the area around 2327 hours. That it paired with IMEI number 15015163000585600. Was that the e-mail paired with number XXXXXXXXXX registered Eric Maingi. Became persons of interest. They were arrested on 19th February 2021. And placed in different police stations. They were interviewed separately. Diana was found to be a person of interest.
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89. The IO reiterated Diana's witness statement. He laid emphasis on the incident of the alleged attempt by the accused person to seduce the deceased, stating that, Diana told them. That when she confronted the accused, he became very furious, accusing the deceased. Of an intention to ruin his relationship with Diana. That on the evening that the deceased disappeared. The accused had come back home.



- 2100 hours. Took possession of his phone. Which she had paired with her line and left the residence. And she did not hear him come back. Until morning, when she found him in the bed. He stated that. The act Tamar told him that the accused person. ADD cushioned them not to inform the police about the counter. Over this matter. He told the court. That. Diana, when interrogated about the injuries on the accused person's hands, confirmed that she had seen the injuries but did not give them any deep thought. The court that they took the accused person for examination. At the hospital, where it was confirmed that the injuries were about two months old and concluded that they may have been defense marks. He said they took buccal swabs from Erick, Diana and Tamar and together with the exhibits found at the scene forwarded them what did them to the government analyst for general DNA profiles. He testified that the DNA profiles were not successful.
90. Regarding the whereabouts of the deceased phone, he confirmed that the transactions that were made. At 1837 hours was for the purchase of bundles. That 1811 hours the 400 shillings was paid to our wines and spirits' shop. And the 50 shillings was paid to a shop that sold assorted households. CCTV. Be umm investigations were unsuccessful. As the shops had heavy traffic. Of customers.
91. In conclusion, he said that his view was that there must have been some confrontation before the deceased died, that the postmortem showed that the last meal was undigested. And therefore, death could have happened between zero to six hours after 1530 hours of the meal. And that from the various interviews with the neighbors in the rental apartments, there had been no commotion in the apartment where the deceased UMM and the others were leaving. But it was confirmed that she had left on the 6th of December 2020 in the evening. Him The injuries found on Eric's hands must have been defense injuries. The mobile phone used by. Diana was seen within the area of crime at around 2327 hours on the night of 6th December 2020 paired with IMEI 015163005856 hundred commonly used by Eric. Regarding Diana's, umm, mobile number. In the same handset, she explained that she had inserted her. Line in the same handset. And that could be confirmed from the call data records. At 2038 hours on the 6th of December 2022. He said that. Since the accused person was not in the house. And that he had earlier had a confrontation with the with the deceased and that he had defensive injuries. In place, they were suspicious of their activities and believed that he had a hand in the murder of the deceased person, whose social circle was limited to her school, Hostels and Njoro. They then recommended that the accused person be charged with this offense.
92. On cross examination confirm that the scene at the river was a secondary scene. He told the court that he was not able to establish the primary scene. He said he could not recover anything from the secondary scene because he visited it two months later.
93. Regarding the call data. He was asked whether it showed whether the three numbers communicated to one another on the material date. He told the court that there was spontaneous communication on the 6th of December 2020. Between the numbers of Diana and that of Eric. In the morning and in the afternoon. He was asked whether there was communication between Eric and Diana's number with that of the deceased. He confirmed that there had been no communication. He was asked whether he could place the at the scene. And he said that the deceased phone went off at 1837 hours at Belbur, 400 meters from Egerton campus gate along the Njoro Mau Narok Rd. He said he went to Belbur area, and when asked how he determined it was 400 meters from the university gate, he told the court that, uh, the 1814 hours transaction. At Regina's shop was at Njoro Canning along the Njoro Mau Narok Road. He said that Eric's now a cold data showed that at 1755 hours the location was in Njoro Canning 1859. He was at Rurii Beestone. He said that when he visited the apartments where Diana and Eric lived, the location was overlapping between Egerton and Njoro Canning.
94. He confirmed that when Eric left that afternoon, he left without his phone as Diana had kept it. She kept the phone until Eric arrived around 9:00 PM. Up to that time she had Eric's phone. The phone



did not call or SMS the deceased. He said the marks on Eric's hands appeared like Neil Max. But the denials of the deceased were not examined. He said he did not find anything to connect the injuries on the accused with the deceased. The court sought to find out whether the data had been analyzed by Safaricom, and the witness told the court that their analysis was done by the Crime Research Intelligence Bureau. Analysis section. He said that one corporal, Daniel Macharia. Assisted in making deductions in relation to the locations. Thus, to whether there was an analysis report, he said there was none. There were just highlights.

95. PW13 was PW8 stepped down. Number 76478 Sergeant Joshua Tobolei told the court that he was assigned to investigate a death incident reported as a drowning incident at Njoro . Police station on 10th of December 2020. he accompanied the mother of the deceased, one Elizabeth Muthoni, to the Egerton University Mortuary where she identified the body of Eunice Njeri. He said the postmortem confirmed that the deceased had died due to strangulation and he decided to revisit the scene where the body was collected from, Ngongdu, about 5 kilometers from the Egerton University. His view was that the volume of the water was too low for one to drown. He also said that the water in the river, the volume was too small to sweep the body. He recovered the bottles, the empty bottles. Suspected that the deceased. I had taken the alcohol. He recorded the statement of the mother of the deceased. And that of Diana. He said that DCI officers took over the matter by 3rd February 2021. He handed over the files and the exhibits.
96. On cross examination, he said that his first contact with the matter was on 10th of December 2020. It was the same day he went to the Mortuary. He said he revisited the scene on 10th of December 2020 and it is approximately 5 kilometers. From Egerton University. And three kilometers from the residence of the deceased. He said the place called Bell Bull, was roughly 2 kilometers from the Njoro University Gate. He said the water was below the knees and could not drown a person. He said it was not in his statement that he had tested the depth of the water. Nation He said he went back to the scene to look for evidence to support the finding of strangulation. He said he found. Uh, old man and the son, but did not record their statements. However, he said he ruled out drowning as a cause of death of the deceased
97. The prosecution closed its case and the accused person was put on his defence in accordance with s. 306(2) of the *Penal Code*.

The defense.

98. The accused person made a sworn statement of defence. He confirmed that he knew the deceased. That Diana was his wife and Tamar was a mutual friend to all of them. He confirmed that he met Diana in 2015. They became friends. And after his graduation from Egerton University, he would visit her frequently. That the three of them lived separately but shared meals, and that he moved in with Diana who was expecting his child in July 2020. The child was born on 13th September 2020. The three continued in the same way ; to contribute towards the purchase of meals and each member would arrange the meals for everyone.
99. On 4th December 2020, he told the court that on that day, Diana was attending her uncle's burial in Nyandarua. Because the covid pandemic was at its peak he did not want to travel with a three month old baby in a matatu to the funeral. He chose to remain behind and take care of the baby, and the three ladies made an arrangement for one of them to remain behind to assist him with the child. And it was Eunice Njeri who was to remain behind. When they remained in the house , each of them was doing their own things in the house. At some point, Eunice was washing the dishes while playing music and moving to the tune of the music. He noticed because she was usually not such a vibrant person. That he jokingly asked her, Kwani leo umeambiwa uchunge Bwana? (Were you asked to take care of the



husband as well?)He immediately noticed that she was upset by his comment. And he apologized, he regretted it, and to him, the issue ended there.

100. He testified that Diana and Tamara arrived home about 9:00 to 10:00 PM. And they all shared about the funeral, but the encounter with Eunice was not discussed.
101. The matter came up on the 5th of December 2021 him when he had left the house and gone to Nakuru to a club near Taidy's. That is when Diana called him, quite furious, asking him about the previous day's encounter with Eunice. Diana told him that Eunice had told her that he had tried to flirt with her. Diana demanded an explanation. He told her he would do so as soon as he got home. He stayed at the club until around 9:00 PM and went home. He found Diana at home, still furious. He said he had made an innocent comment. She opted to call Eunice so that she would listen to both of them and to weigh if they were lying. Around 10:00 PM, Eunice came. They both explained what had happened. He apologized and told her it was a momentary lapse. Eunice left for her house and they slept. But Diana was not convinced.
102. On 6th of December 2020 was Diana's birthday. At breakfast, Eunice was not present. Diana prepared lunch. They called Eunice who came. And they had lunch. When he was leaving, the three were seated in the sitting room. In his mind, he was feeling that the cooking arrangement was not good because it had brought this temptation and Eunice was no longer comfortable. She would come late for meals especially with the suspicion in the air. He said he called her outside and shared his mind. Because of the suspicion in the air, she should sort out her meals at her place. Diana followed them outside and she heard what he, Eric, had told Eunice. And then he left them together. Diana had hidden his phone because she did not want him to leave the house. It was a make INFINIX whose IMEI was 151630005856. It was a dual sim phone with his number XXXXXXXXXX and Diana's number XXXXXXXXXX registered in the name of her mother, Lilian Nyoro. He was forced to carry the Kabambe, which had the number XXXXXXXXXX.
103. He said he spent the entire afternoon playing pool at a club called Backyard. And Diana called him around 4:00 to 5:00 using his number XXXXXXXXXX, she was still asking about the incident with Eunice. He stayed out till between 9:30 and 10:00. When he was about to leave the club he called Diana and they agreed to let the matter lay. He went home, found Diana with Tamara who left, and Diana went straight to bed. He ate his supper and then joined her in bed. He told the court that he did not take back his Infinix phone because Diana did not give it back to him and did not know where she had kept it.. He denied speaking on his phone that night. And since they were not on speaking terms, he did not speak to her on the night of 6th. He said he did not make any contact with Eunice from the time he left to the time he came back home, and the last time he had seen her, she was with Diana.
104. On the morning of 7th December 2020. They had breakfast, but Eunice was not present. And none of them could find her. During the course of the afternoon, he could hear the two Diana and Tamar, asking each other why Eunice had not shown up, but he could not intervene because of the suspicion that was in the air. On the 8th. Eunice had still not been found and her phone was not going through. The 2 ladies were still looking for her and he heard them making phone calls to her mother asking whether she was at home. There were exams on the 9th and Diana told them that Eunice had not shown up. On her way back from exams, Diana called him, sounding very disturbed, saying that she had overheard from nearby vibandas that a body befitting the description of Eunice was found in a river. She told him she overheard it from nearby vibandas. That time he was in the house with Tamara, who overheard the conversation and brought commotion. She began shouting and crying. And that is when the caretaker, Mr. Laban, came to the house. He informed them he had attended the retrieval of a body but did not know it was Eunice being recovered from the river. He told them that the body had been taken to the Egerton University Mortuary. Together with their friend Emma, her boyfriend



- Saddam they decided to go to the Mortuary to see whether it was Eunice. They confirmed that she was the one. And they were referred to the Dean of students to whom they reported that they had identified the body. Later, the mother to Eunice was called. The police came searched the house of Eunice. Arrangements were made for the collection of her belongings.
105. The caretaker told them that there would be a postmortem.
 106. It was conducted and later Diana and her friends attended the burial of Eunice . He was left at home with their son
 107. The accused told the court that on the 10th of December he travelled because on 11th of December he had an interview in Nairobi. He came back three days later. While he was in Nairobi, Diana arranged to move out of the house they were staying in and had found a house in Mwariki where they stayed until he was arrested on the 18th of February 2021, when police officers from DCI came and identified themselves as the investigators of the death of Eunice. They had arrested Tamara and they came with her to Mwariki. He said that the police conducted the investigations and chose to release the 2 ladies and recommended for him to be charged.
 108. Regarding the call data from Safaricom, that the prosecution him at the scene, denied that fact ad proceeded to take the court through the relevant data. The most relevant was that he did not have the phone from 2:30pm when he left as Diana had hidden it. The calls made on that phone were from Diana's line and not his.
 109. He referred the court to the exhibits in particular, Exhibit 11 where it was clear that between the hours of 9:01 PM on the 6th. December to 8:36 AM on the morning of 7th December 2020 no calls were made from his phone. Nor were any SMSs received by his phone. Hence, it was not true, as Diana had alleged that he came home on the night of the 6th of December, left the house and made calls on his Infinix phone. He drew the court's attention to the fact that Diana's phone number received a call from Diana's mother's number on that night at 2103. Hence, it was not true that he had used his phone at all from the time he left the house, where he had left Diana with Eunice, to the time he came back.
 110. Regarding the call data for Eunice's phone he observed that exhibit 11C showed that there were incoming calls and outgoing calls and SMS to the phone of the deceased, but none of them was from his phone.
 111. Regarding the location of Eunice minutes before her phone went off, he pointed out that it was in the Belbur area. He observed she had received several SMS from that area, but the investigators had not looked into that and what she was doing in that radius. And that none of his phone numbers had made any calls or contacted her phone at all. It was his view that the investigation officer did not properly analyze the data from Safaricom and the little analysis that is made was one sided, intended to subvert justice and misguide the court.
 112. Regarding the alleged injuries on his hands he pointed out the dates of the alleged offence as between the 6th and 7th of December, 2020, and he had the injuries on the 25th of February, 2021. He denied that they were not sustained at the time as alleged. He stated that the bruises were in an open part of his body, the back of the wrist, and would not have been possible for Diana not to notice such injuries at that time of the alleged offence. He produced photos to show that in December 2020 he did not have any injuries or scars on his hands.
 113. He said it was not correct for the caretaker to say that Diana had moved out of his flats because she was afraid for her life or fearful of the accused because they moved in together and continued living together, even up to the point when he was arrested, and he testified that they even traveled to his home for New Year celebrations.



114. He told the court that the I.O presented him with three scenarios all regarding his son; that because of this case he needed to choose whether his son could live without each parent; without the mother, or without the father or without both the parents i.e the father and the mother?. That it was his decision to make. That though he felt intimidated, and blackmailed he said he chose to stand by his truth and it was not true that he had committed the offence. He denied the charges.
115. On cross examination, the prosecution cross examined him on the over 700 SIM cards he was found with and he told the court that the SIM cards were used for betting.
116. He told the court that it was not true that Safaricom located him at Njoro Kenyatta at 2327 hours on the 6th of December 2020. He said he did not know the area where the body was found but knew that the body was found on the 7th of December 2020 from the records. The photos he produced showing that he was home on the 25th of December 2020, he did not have any injuries. He said that the same were taken by Diana and some by himself. And that these photos were just taken and they were not focused on anything.
117. The prosecution also raised issue as to whether he was an expert in electronics and whether the photographs had any time and date stamps. He told the court that on Google one would be able to find the photos and they would be having a time stamp. He said the photos were taken with his mobile phone that was at the material time held by the police, but they were available on Google.
118. The accused confirmed that on the date Diana and Tamara went for a funeral, he was left home with Eunice and his son and that he did make a sexual comment which made Eunice unhappy. He said as a result of that, he and Diana began to have misunderstandings. He conceded that he was not happy that Eunice had told Diana his wife of what had happened. He confirmed that on the 6th of December 2020, he suggested to Eunice that it would be better if she picked up her gas cooker and began to cook by herself. He said after that he never saw her alive again. He denied that he left the Nakuru for Nairobi because of the case and stated that he had a visa interview that had been booked long before that date. He told the court that the photos that he had showed that there were no marks on his hands in December 2020.
119. Upon the close of the case for the defence The state did not file any submissions and chose to rely on the evidence on record.
120. Mr. Mugambi counsel for the accused person filed written submissions which I have considered.
121. The issues for determination arise from ingredients that make up the offence of murder. The accused person submits that these are set out in Antony Ndegwa Ngari versus Republic [2014]eKLR as cited in R vs Emmanuel Otieno Pamba [2020]eKLR; that is whether the prosecution has established, beyond a reasonable doubt these ingredients of murder:
1. Whether the death of the deceased occurred?
 2. Whether the death of the deceased was caused by an unlawful act or omission.
 3. Whether the accused person committed the unlawful act or omission which caused the death of the deceased.
 4. Whether in doing so, the accused person had malice, a forethought.
122. The court was referred to authorities on the definition of reasonable doubt:see R VS Jane Muthoni Mucheru &another [2021]eKLR



123. It is not in dispute that the deceased died. Her body was found at River Subuku or River Ngundu, different witnesses called it different names. But what is not in doubt is that, the body was found in the water at the river.
124. It was submitted for the accused that the prosecution did not establish that the death was caused by an unlawful act or omission that there was evidence from Diana and Tamara that the deceased was mentally unstable at the material time. That she disclosed to Diana that she was overwhelmed and Tamara found that she had for the first time in a long while opened her anxiety pills bottle. That when she left home on that 6th about 4:30pm she did not disclose her destination. It was argued that she could also have caused her own death.
125. I have considered the evidence. It is true that the deceased had suffered a mental illness. It is possible that the events from 4th December, the upcoming final examinations could have been overwhelming. However, though a possibility, the evidence on record did not support the theory that she had taken her own life.
126. This theory is supported by the initial findings by the police that when the body was found, they assumed it was drowning and they removed the body to the Mortuary with that thought in mind. It is only after the postmortems that it was revealed that it was strangulation. The pathologist who conducted the postmortem described the injuries sustained at the neck of the deceased and said that they were indicative of strangulation secondary to assault. What is certain is that the deceased died and the pathologist established that it was as a result of strangulation. Hence death and the cause of death were established.

Who killed Eunice Njeri?

127. There was no eyewitness, hence the prosecution relied mostly on circumstantial evidence. This was defined in *Kipkering, Arap Koske and another (1949) 16 EACA*. The court stated

Such evidence is sometimes compared to a chain with its links as a rope with several strands, each link or strand must be carefully tested and if in the end it does not lead to the irresistible conclusion of the accused's guilt, the whole chain or rope must be rejected

128. The accused also relied on *Abanga Alias Onyango V Republic Cr Appeal No. 32 OF 1990 (UR)* also cited in Emmanuel Otieno above where the Court of Appeal set out the applicable principles in determining whether the circumstantial evidence adduced in a case was sufficient to sustain a conviction. The court stated that

It is settled that when a case rests entirely on circumstantial evidence such evidence must satisfy three tests

- i. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established
- ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of their accused
- iii. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human possibility the crime was committed by the accused and none else'



129. So, does the evidence before me taken in its totality satisfy the three tests: is the inference of guilt cogently and firmly established against the accused person, does the evidence unerringly point the finger of guilt at him, and is the chain of evidence unbroken?
130. The accused person denied the offence. The prosecution and he, each placed evidence before the court. It goes without saying that the burden remains that of the prosecution to prove the charge beyond a reasonable doubt. To do so the prosecution through the I.O set out several grounds upon which their case was based.
131. First that the accused person had reason to kill the deceased because the deceased was a threat to his relationship with Diana. It is their case that he did this on the night of the 6th of December 2020.
132. Second that the data from Safaricom placed him within the area where the body of the deceased was found.
133. Third that he had sustained ‘defence injuries’ in the course of killing the deceased.
134. To determine whether or not the accused committed this offence the court has to examine each of the prosecution’s grounds for this case.
135. On the issue of anger over a threatened relationship by the alleged sexual advances by the accused to the deceased, it emerges from the evidence that the person who was most angered, and most affected was Diana. She was so angry that even the deceased had to ask her whether she had made a mistake to tell her what her boyfriend had done. The day Diana learnt about it she told the deceased to cook from her house something that even surprised their friend Tamara. In addition, she rang the accused more than once, expressing her anger, she discussed with Tamara expressing her doubt over what both the accused and Eunice had told her and even organized a meeting in their house to discuss the issue. She was upset, broke down and cried. This was confirmed by Tamara. An air of suspicion hang in the once friendly atmosphere and the accuse confirmed it in his defence that he had to advise the deceased to consider making different meals arrangements.
136. From what is before the court, accused person conceded that he had made a mistake by making a statement that was sexually nuanced towards the deceased person. He admitted that what he had done was wrong and offensive to the deceased and to his girlfriend. However, there is no evidence that he actively pursued the issue and that is actually Diana who kept bringing up the issue leading to the tension that loomed in their house.
137. In addition, Diana’s testimony was that she did not know how the deceased ended up in her house on the day she went for the burial. It is not clear why she said that but it would appear that she suspected her friend of having ulterior motives over her boyfriend. Yet both the accused and Tamara told the court that it was the arrangement by the ladies that the deceased be left behind to assist him with the baby and in any event, she had lost her phone so she was not traveling to the funeral.
138. It was also Diana’s testimony that created the impression that the accused engaged in a suspicious phone call with the deceased or in relation to the deceased’s disappearance on the night she died. The prosecution produced the call records for the accused and deceased’s phone number. The accused person, denied making any such calls that night. Relying on the same call records he demonstrated that no calls were made from his phone on that particular night, making Diana’s testimony on this vital limb of the case untruthful.
139. On prosecution’s ground that the data and call records tied the accused to this offence, I must begin by pointing out that the prosecution dumped the records on the court without an analysis on how they



- connected the accused to the offence. The Safaricom witness stated that it was upon the I.O to produce an analysis. The I.O told the court that he could only relay highlights of the report . The person who prepared the highlights did not testify. The accused spend time studying the reports and demonstrated how they failed to connect him to the offence.
140. The evidence on record is that Diana and the accused shared the Infinix phone. It was twin sim. They put their sim cards in that phone. That was established through IMEI records. The accused person told the court he had a Kabambe mobile phone.
141. The evidence is that when he left home on 6th in the afternoon, Diana had hidden the Infinix phone. Hence at all material times that phone was with Diana and according to the prosecution she was in their house at Ngongu, and that she never left the house. From the time that the accused person left the house at around 2:30pm on the 6th and went to Nakuru town he did not have in his possession the phone that had his sim card . He told the court the court of the specific places where he was until the time he got home. According to the prosecution, which supports the accused's defence, all the time he was away, his mobile phone that bore his sim card was with Diana. From 4:30pm to the time the deceased's phone went off about 6:37pm, it is Diana who had the accused's phone and sim card. She had accused's phone after that till the accused came home after 9:00pm.
142. The accused's testimony is that when he came home, he and Diana were not talking. She did not give him his phone and he did not make any calls. Diana's testimony contradicted the call data. She stated that the accused upon his arrival at home on the night of 6th , he took his Infinix mobile phone which she had hidden from him when he was leaving , and made a call and went out speaking on his phone, and that he stayed out for so long that she did not hear him come back inside. The data showed that no calls were made from his phone that night.
143. In addition, the evidence is that the deceased phone went off at 1837 around Belbur. The phone data produced by the prosecution indicated that her mobile phone communicated regularly from Belbur between 2nd December 2020 and 6th December 2020. On that morning at 0829 hours she had communicated from that location, which is the same location that her phone went off. Who was she communicating with just before her phone went off? That data was available yet the I.O did not check that out and at least follow the lead. There is no evidence that the accused's phone communicated with the deceased that afternoon or that night. When he left, he left Diana with the deceased. That is confirmed by Tamar. He did not get to speak to her again either in person or on phone.
144. The prosecution did not establish how the accused person would have known where to find the deceased . They also did not tell the court what happened to the deceased's phone, whether it was recovered, and if not, what was their finding.
145. What is clear is that the prosecution dumped that data and call records on the court. Call and data records is a whole lot of data. The prosecution to say the least did not attempt to interpret the probative value of this data. See R vs Japheth Mangera Nyainda & Anor [2015]eKLR. To expect the court to pore over them and draw its own conclusions is to send the court in search of the proverbial needle in a hay stack. It is the I.O who knew what he wanted to achieve by requesting the data from Safaricom. It was upon him to present the court with analysis of the report supporting his position.
146. In this case he stated that the data placed the accused and the deceased at same time at Njoro Canning. A glance at the records shows that the Njoro Canning, Egerton University as areas that feature commonly where the accused , Diana and the deceased were to be found not just on the material dates but on other dates. It even appears as if the deceased was residing at Njoro Canning because from her call records



- she was most of the time at Njoro Canning/Egerton. However, on the material date she had phone activity at Belbur which location does not appear on the records of the accused person.
147. In the totality of the call and data records, they did not place the accused at the scene or with the deceased anytime after he left the house .
 148. Regarding the alleged defence injuries on the accused's hands: This evidence was introduced evidence at the time of arrest the accused person, that he had healing bruises on his hand creating suspicion that they defence injuries sustained during the commission of the offence. However , there was no way of knowing when exactly the bruises found on the hands of the accused on 24th February 2021 were sustained and where they had come from. The offence was alleged to have been committed on 6th December 2020. The accused was examined by the clinical officer on 24th February 2021, the clinical officer did not help as he kept stating that the injuries were fresh, and that they were healing. Whether fresh or healing the issue was that he could not tell how old the injuries were.
 149. In his defence the accused person produced photos he testified were taken on the 25th December 2020 and in which his hands are visible and without injuries or scars.
 150. More importantly the pathologist and the I.O did not take any samples for DNA from the deceased's nails to assist in the catching of the alleged attacker. One would have expected that with such a finding of the cause of death, and with the I.O's deduction that it is not unusual in cases of strangulation for a victim to fight back, DNA from the deceased's fingernails could have assisted.
 151. At the scene of crime were empty bottles: one said to be of empty bottle delmonte juice or was it fanta?, the other, napoleon alcohol, the deceased's bag and one shoe. What did the I.O do with these items?. There is an Exhibit memo dated 1st March 2021, received by Government Chemist on 2nd May 2021. It shows that buccal swabs were taken from Diana, Tamar and Eric, and the bottles one for napoleon alcohol, the other Fanta orange plastic bottle , were presented with a request for 'DNA profiling and comparison between the buccal swabs and the two bottles.
 152. The government analyst's report stated that it was not successful in producing DNA from the bottles.
 153. It is not clear whether the shoe that was found at the scene belonged to the deceased and while the bag was said to belong to the deceased, it was not clear why the shoe and the bag were not submitted for DNA :whether they contained anything. In addition, the court was not told whether the phone of the deceased was retrieved and if it was, where it was found.
 154. The I.O told the court that he treated the scene where the body was found as the secondary scene, meaning to them this person was killed elsewhere and then brought to the river. However the court was never told where the primary scene was and what had happened there. Except that statement from the I.O no evidence was produced to show that this person may have actually been killed elsewhere, and then brought to the river to make it appear that she had drowned.
 155. There was also no evidence from the scene itself, that there were signs of the body being transported to the river, or drag marks on the body, anything that could demonstrate that indeed this body had been brought from elsewhere to the place it was found. That theory was not investigated to its logical conclusion that indeed the deceased was killed elsewhere and that the body was simply dumped at the river.
 156. In addition, there was no investigation as to whether the deceased had taken the alcohol/juice from the bottle that was found at the scene, yet the police had evidence that she had paid kshs 400 to a wines and spirits shop that evening. Did the police interrogate the persons from whom the deceased made purchases just before her phone went off?



157. From the foregoing analysis of the four fronts of the case for the prosecution, and the accused person's statement of defence, it is evident that there could be other versions as to what happened to the deceased after she left the house on the 6th December 2020. That something other than the involvement of the accused could have happened causing her death and that the I.O did not take his time to investigate these other possibilities and the accused was charged as the first suspect, out of strong suspicion that he may have committed the offence.

158. Having considered all the evidence and the submissions by the accused person, it is not in doubt that Eunice Njeri, a young lady, in her prime, just about to complete college, died. But as to who caused her death, there are sufficient loopholes in the case for the prosecution to create reasonable doubt as to where death occurred and who caused the death. This doubt must be resolved in favour of the accused person.

Sawe v Republic [2003] KECA 182 (KLR)

159. I conclude with the words of the Court of Appeal in *Sawe v Republic* [2003] KECA 182 (KLR)

In our judgment, the evidence does not satisfy the legal requirements of circumstantial evidence to warrant or justify the conviction of the appellant on the basis of the evidence on the record. We are, therefore, unable to uphold the conviction entered by the learned trial judge. We have evaluated the evidence as we are entitled to at great length and there is really nothing left to connect the appellant with the death of the deceased except mere suspicion. The suspicion may be strong but this is a game with clear and settled rules of engagement. The prosecution must prove the case against the accused beyond any reasonable doubt. As this Court made clear in the case of *Mary Wanjiku Gichira v Republic* (Criminal Appeal No 17 of 1998) (unreported), suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence. We disagree with the learned judge's view that the prosecution had proved its case against the appellant beyond any reasonable doubt.

Hence, the charge of murder is dismissed. The accused person is acquitted accordingly. Right of appeal in 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY ON 1ST AUGUST 2025

MUMBUA T MATHEKA

JUDGE

Accused present at Nakuru High Court

Philip Ombata Court Assistant

Mr. Kinya alongside Mr. Mugambi for the accused

Mr. Kihara for the State

