

KENYA / JUDGMENT

Republic v Nyaga [2026] KEHC 13534 (KLR)

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COURT

High Court

BEFORE

EM Muriithi

CASE / FILE NUMBER

Criminal Case 7 of 2018

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Republic v Nyaga (Criminal Case 7 of 2018) [2026] KEHC 13534 (KLR) (17 September 2026) (Ruling)

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[2026] KEHC 13534 (KLR)

Republic of Kenya

In the High Court at Kerugoya

Criminal Case 7 of 2018

EM Muriithi, J

September 17, 2026

Between

Republic

Prosecutor

and

Cecilia Maitha Nyaga

Accused

Ruling

1.The accused is charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code with particulars that she “on 29th May 2018 at PI village, Murindiko Location within Kirinyaga County unlawfully murdered Patrick Gitonga Njiru.”

2.The Court has considered the evidence presented by the nine (9) prosecution witnesses and the submissions filed by the accused dated 6/2/2026. The court has also considered the evidence against the requirement to prove the case beyond reasonable doubt in terms of the elements of the offence of murder contrary to section 203 as read with 204 of the Penal Code.

3.At this stage, the court is required to consider whether the prosecution evidence has established a prima facie case, which as held in *Ramanlal T. Bhatt v. R* (1957) EA 332, 335 is “one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

4.The court is under a duty, where it considers that a prima facie case has not been established, to acquit the accused. See *Murimi v R* (1967) EA 542 and *Wachira v R* (1975) EA 262. In such instance, the court is required to give full reasons for the decision unlike where it finds that a prima facie case has been established as held in *Kibera Karimi v R* (1979) KLR 36 (*Trevelyan & Todd JJ*), so as not to prejudice the fair trial of the case by giving the impression that the court has already made up its mind without hearing the defence. See also *Festo Wandera Mukando v R* (1976 – 80) KLR 1626 and *Antony Njue Njeru v R*, Nairobi CA Cr Appeal No. 77 of 2006 and the Kenya Judiciary Criminal Procedure Benchbook, 2018 at 99-100.

5.In this case, upon consideration of the prosecution evidence, the court does not find, having regard to the ingredients of the offence of murder, that the offence has been established, and the court will consequently give full reasons for the decision.

The Evidence

6.The Prosecution called 9 witnesses, in support of its case.

7.PW1 Peter Mugendi Zackaria, testified that, “I come from Runyenjes. I am a farmer. On 29/5/2018, concerning this case I was called through telephone at about 10.20 pm by my sister called Jane Wawira. She informed me that I look for a vehicle and go to PI where my brother lived. She said we go for him and take him to hospital as he had been attacked by thugs and was lying down there. We went with my brothers Martin Njeru, David Kariuki and Sylvester Njeru who took us there with his vehicle. On reaching there, we found Policemen had come to the scene. It was about 11.00 Pm. We entered the Boma. There were people outside the house. The deceased was on the ground allegedly attacked by thugs. The police asked us who we are. We told them we are his brothers and the wife called us to take him to hospital. The policemen told us to go inside and see if we could take him to hospital. We entered the house there was a waiting area and there was a door to the sitting room. We then went towards his bedroom. There was blood. The gate was not broken. There was a padlock. The door to enter the sitting room was not broken. The bedroom had a door. It was not broken. The bedroom door was open. We entered. Where my brother was on the bed, the beddings were full of blood and the deceased was on the floor next to the bed. The head was severed and only a small muscle held his neck at the back. The neck had been cut. The beddings were full of blood which had penetrated the mattress. Where the deceased was there was no much blood. It appeared he was cut while on the bed. The police told us since we had seen we can remove the body to the mortuary and leave them to

investigate. I asked the wife of my brother what happened and she told me that three people came as she was polishing shoes outside. One held her and two entered the house. I did not ask her whether they were armed. She told me she heard noise inside, 'KO' like something was hit. She then called us to take him to hospital. I asked her why she did not use her vehicle or the deceased vehicle to take him to hospital. The accused told me she was detained outside the door of sitting room where there was a waiting room. My brother had a vehicle KBY 370 Toyota and the wife had KCE 808 E Toyota. I found the vehicle at the compound when I went there. I know that the accused is a driver. I have seen her driving and she had come to greet my mother using KCE. I have seen her driving motor vehicles for over ten years that I have known her. There was a parking and the vehicles were parked there. The accused told me that nothing was stolen but the television was outside the compound. It was about five metres from the door. She said they wanted to steal the television. The accused told us she was tied outside using a net not a rope and she was tied on the hands and the stomach. It was a net like the one put on windows like curtain liners. The police recovered the net. The accused said she was untied by a neighbor. The tree was the small tree which drop leaves as it grows. The stick had the size of my two hands, demonstrated with the palms folded in circular. The tree is still there. I had known the accused for over ten years. Their relationship had disputes which used to be determined. The deceased was my younger brother. I had resolved about five disputes. On 29th May, 2018, five months previously I had resolved a dispute. The only allegation is that the deceased had several women in his life. The accused was his official wife. The deceased used to refer to other women as his wives. One was Nyawira another was mother of Amani. The only problem that we discussed is that the deceased had many women. We had sat to resolve the dispute five times. The accused is the one who had complained on all occasions. In December 2016 my brother had come home with another woman, the one I said is Mama Amani. The deceased said his wife was giving him problems, that is Mama Nyakio the accused, had given him enough problem and he had had enough and would leave her and marry another wife and take care of his children. The deceased had come with accused and Mama Amani. The accused asked my brother since he has brought another wife and they have acquired properties together what will happen to those properties. My brother told him there was nothing belonging to wife in his properties, all the properties were his and herself and that other woman was his. It was in 2016 on 25th December, 2016, Christmas day. The deceased was staying with two wives. The accused and Mama Amani. She was staying in Embu town. The deceased used to come home with Mama Amani. My mother told Mama Amani not to look at properties of deceased as they belonged to Mama Nyakio. She said she was ready to work as she had hands. The deceased was building a house for mother of Amani and she was the one supervising. Neighbours knew her. The accused was living at PI. The accused and Mama Amani were staying in my mother's house whenever they came, they did not have their own houses. My relationship with the accused was okay. She used to come to me and complain to me about my brother and ask me to talk to him. The accused in the dock was my brother's wife. The accused in dock identified."

8. On cross examination, he stated that, "I am Zackaria Mugendi. The deceased is my brother. I was older than him. We were brothers and used to talk as we were not enemies. We used to share our matters. The deceased had many women lovers outside the marriage with accused. He even brought one home as I stated. At the time the deceased met his death he was friends with Mama Amani. I recorded a statement with police. The incident was on 29th May, 2018. I recorded a statement with police the following day after the incident, 30th May, 2018. I recorded the statement at Wang'uru Police Station. What I recorded was fresh in my mind. I was called at 10.20 Pm by my sister Jane Wawira informing me about the death. The accused called Jane Wawira my sister and told us to go and take the deceased to hospital. The statement that Gitonga called me and told me he had been told by Thuku his cousin what I said Nyawira told me is true. It is not lies because I called Gitonga who is my cousin as I could not believe. What I told court can be relied on. I was confused. I have told court the truth. When I received the call, I was at home. It was about 10.00 Pm. My home is at Mukuri. It is not far from PI. Mukuri is in Runyenjes. I was with David Kariuki, Martin Njeru, and Sylvester Njeru. I was confused. Sylvester Njeru was driving. I was called at 10.00 Pm. I reached the boma at about 11.00 pm. The gate was closed but the small gate for people to walk in was open. There were many people. I found police officers at the scene. I asked what happened and police officer asked me who I am. I don't know him. I did not know whether police had entered but they are the ones who led us inside the house. I did not know whether they had entered. Police led me to the house. I used to visit my brother in his home and I was with him when he bought the land and built. I never used to enter the bedroom. We would sit and discuss at the sitting room. There was light. I saw the vehicles and the television set in the compound. There were two vehicles. The police vehicle was within the compound. A Policeman told me to see that the door was not broken. He first showed me the main gate. I told him it was not broken. I checked. At first, we viewed the body. I was with Martin Njeru, David Kariuki, and the police officer when I viewed the body. We were four. I saw many policemen, 6-7. They had a vehicle. I was in the room. The body was on the floor. I did not see any weapon. I left the home of the deceased in the morning at 4.00 a.m. We were told to go and bathe then meet afterwards at Wang'uru. The deceased was working as Secretary Manager with CDF. He had no problem at his place of work. I found the accused after she had been untied. Dethroned. The accused used to say that the problem was over him having many women. On 26th December, 2015 the deceased had called the meeting and told friends of his mother to attend. The accused was the 1st to arrive. The mother of Amani came with deceased. The ceremony went on well. I don't know the type of marriage the deceased and accused had contracted. I don't know whether the deceased and accused had a child. Mama Amani was supervising the house of my mother being built. In Embu the deceased was living in a rented house. The house he had built at PI is where his wife the accused was living. I am not aware that the deceased had attempted to commit suicide. I never heard about it. The deceased loved his family. He was educating the children. He had bought a car for his wife and they used to go to Mombasa on holiday. They loved each other very much. I had no grudge with deceased. I had no grudge with accused or her children. I had no issue with mother of Amani. There was no time I disagreed with deceased. He had not disagreed with his mother. The deceased had not disagreed with any member of the family. The deceased never told me that he felt threatened due to the nature of his job. I can't tell who caused

the death of deceased of how it was caused.”

9. In re-examination, he stated that, “We had never sat to resolve dispute with people outside the family. In 2016 we were discussing, eating and drinking, it was Christmas and knowing each other, we were not resolving a dispute. We had not sat like that any other time. My sister Jane Wawira is the one who called me. I have told the court the truth. The accused told us she was tied.”

10. PW2 Joseph Muiruri Nyaga, testified that, “I stay at P.I. I am a businessman. I buy and sell chicken. On 29th May, 2018 I left my place of work at about 8.45 p.m and went home. I left the place where I do business. I met my family, my mother, wife and child being served supper. I joined them and we ate. My mother left and went to her house. After a short while I heard screams outside. It was a woman screaming. I did not know the voice. I went outside and my wife followed me. I went to my mother’s house. I knocked her house. The house of my mother is next to a perimeter of a neighbouring house. My mother opened I did not talk to her. I went and called a neighbor called Mwangi. He came out with his wife. I accompanied him towards my mother’s house. There were other neighbours who had started coming. The screaming was on the other side of the perimeter wall and I feared and could not go there alone. It was in the compound surrounded by the perimeter wall. We looked inside the compound. I heard a woman telling us to help her. I asked her what was wrong and she said it was thieves. We decided to go there but my mother told me not to go. Many people came and my mother told me we could then go as we were many. We went round the perimeter so that we could reach the gate. I was with Mwangi and other neighbours. We were not less than 20 people. We entered the compound through the gate as the gate was open. It was the main gate. Some people feared but I entered with Mwangi and headed to where the scream was. When we asked who it was, I recognized the voice and she also called us. It was dark as there was no electricity. I used the torch of my phone. I found the woman was tied on the legs, stomach and hands. The legs were tied with fabric material, the ones used on sofa sets. The stomach was also tied with the same fabric as well as the hands. The hands were tied on the back. The cloth before court, a netting material - fabric two pieces joined together cream in colour is the one which was tied around the stomach, MF1-1. The hands were tied with a thinner fabric. It is not in court. I can’t tell what had tied her legs. She was naked so she took a lessa (sheet) from the cloth line and covered herself. This is the lessa, identifies a black lessa with some orange colours, MF1-2. She continued screaming and was crying. She told us to go and assist Gitonga her husband. She led us through the kitchen door. The kitchen door was open. I did not go inside. She was holding her head screaming and telling us to go and assist her husband. Many people came. I was with Mwangi and other people who came. Before we went inside, her child that is her daughter came from inside through the kitchen door. Mwangi took the child. The child is called Teddy. Mwangi took the child to his house to stay with his children. The child came out like she had just woken up and held her mother. There was a police post who were telephoned but they were not picking the phone. The people suggested that a person could go and call them. I offered to go there at PI Administration Police Post. I was told that some policemen were on Patrol so I could remain there so that they go to the scene. I was left at the Post and the two Policemen went to the scene. They did not return. The Policemen who were on

Patrol came to the Police Post and told me to take them to the scene. I did so. They were about nine (9) Policemen. One was left at the Post. I returned to the scene. We found other Policemen had come from Mwea. They were interrogating the woman. They told the woman to lead them inside the house. They entered the house through the kitchen door. I heard the woman screaming before I entered. I realized that Gitonga was dead I struggled to get inside. I saw Gitonga on the ground. The legs were at the corridor and the head was inside the bedroom. I did not see injuries but I saw blood next to his legs. I did not look much because the Policemen pushed us outside. I remained outside. Later I saw a police vehicle was driven near the kitchen. They removed the body and placed it in the vehicle. There is an open veranda at the kitchen side and door which opens to the kitchen. The veranda has a roof. The veranda is small but it is long. The main door was closed. That is why we accessed the house through the kitchen door. I did not see any weapon at the scene. There were vehicles in the compound, two of them apart from the police vehicle. I used to see the vehicles being driven by the woman or her husband. After the police did their work, we saw something in the compound, a Television and tissue paper in a pack and a gas cylinder size 12 Kilogrammes I saw them when we were told to collect them and return them to the house. The Television was near the gate. The Gas Cylinder and tissue paper were at the parking near the two cars. Personally, I carried the tissue paper and returned it to the house. Others picked the other items and returned them inside. We were doing it at the same time. The woman did not tell us how many people. She only said they were thieves. Before that day I have never heard of a theft incident in the area. That woman who screamed, asked for help and I untied is the accused in the dock, identified. The accused was tied against a palm tree. I untied her hands. She was tied on the hands with a piece of cloth which was not tight and one could untie with bare hands. I only untied the hands.”

11. On cross examination, he stated that, “I am now thirty-six (36) years old. My home is our family home not rental. The home of Gitonga is on a piece of land that was exercised from our land, his is quarter of an acre while ours is one acre. The land is the same. My mother had come to my house for dinner. The homes, mine is on the upper side, my mother’s house is in the middle and Gitonga’s house is after my mother’s house going down. The compound of Gitonga is surrounded by many homes as there are our homes and people who have rented houses on our shamba near the road, Gitonga home has an access road. I heard screams and when I asked who it was, she said help me, (nisaide). The home of Gitonga has a perimeter fence around the quarter acre plot. There was a metal gate and there was a small gate where people walk in on foot. The gate was wide open. There were no people in the compound. It is only the accused who was inside the compound screaming. There were no lights. There was no security, the only light was from the kitchen. Me and Mwangi were the first ones to find the accused tied. She was tied on the hands at the back, legs and stomach. She was not in a position to untie herself. She had to be assisted by somebody. It was next to a palm tree. She was struggling not just standing there. I can’t know if she was struggling to untie herself. I left many people at the compound and more were coming, I rushed to the Police Post. I found other Policemen when I returned. It was about 12.00 mid-night. The Policemen who I took to the scene had a vehicle, a land cruiser. There were two other vehicles of police who had come to the scene. The gate was still open. There were two

vehicles of the owner of the home, in total five (5) vehicles. I did not know whether police who were there had accessed the house. I don't know whether those I went with entered the house as I did not know them and all had police uniform. I went inside when Policemen told the accused to lead them inside the house. I don't know whether they had entered before I came. I can't tell whether accused had entered the house before I returned. The items which were outside the compound were returned to the house. I don't know who had taken them outside. I heard screams and I stayed for a while. We feared to go there. I had never heard screams from the compound. Gitonga was sold land by my grandfather. He was not my enemy nor my friend, he was my good neighbor. He had lived there for about ten years. I had never sat with him to discuss as my neighbor I never even knew what work he used to do. I came to know that night the work he used to do. He was doing work of CDF. I heard when accused was asked. I don't know how Gitonga met his death. I left the compound at about 2.00 am after the police removed the body. I was there when they removed the body. The gate was opened all that time. Nobody was left. We were told to clear the compound. 3 Policemen were left with the accused, they closed the gate and were left. The body was removed. I don't know how accused left the house. I had gone to the compound once when they moved there but when they built, I had never gone there. There was a time a banana had fallen from our compound over the fence and I went to cut it. Only the maid was there. The second time is during this incident."

12. In re-examination, he stated that, "I found the gate open. The kitchen door was also open. I am the one who untied the accused. The hands were not tightly tied. The child went to the neighbour's house. We found some items outside in the compound and we returned them to the house. I did not see any injury on the accused."

13. PW3 James Mwangi Munyi testified that, "I stay at PI and I am a farmer and businessman. I came to give evidence in this case. It was on 28th May, 2018 when at about 9.30 pm when I left my place of work and went home, I had my dinner then went and relaxed. Later my neighbor who is called Muiruri came and told me that one neighbor was screaming. The neighbor who was screaming was Mama Teddy and is called Cecilia Gitonga. I went outside my house and I could hear screams. The compound was surrounded by a perimeter wall. I asked her what was wrong. She told me there were people there. I went to the gate and found it was open. I feared so I asked her whether those who were making her to scream had left. She told me they had already left. I gathered courage and entered the compound. I found that she was outside and was tied to a tree outside the compound. Myself and Muiruri decided to untie her. We then proceeded to her house and entered the corridor. She sat down at the corridor and immediately she sat down a young child appeared. I picked that child and due to the situation, I took the child to my house. When I took her to my house, I left her with my children so that she could sleep there. I then went back to the compound and found that many villagers had come. I told them we had to report to the police. I was left at the scene while Muiruri went to the police station to report. I took the child to my house because Mama Teddy told me she had heard some noise in the house. I realized there was danger and she had screamed a lot so I secured the child. The mother of Teddy was tied with a cloth on the legs and she had a leso tied on her waist and she was naked. After I untied her, she used the leso to cover herself. Police then came. The house had doors opened but only went upto

the corridor. That is when the child appeared. When Police came, I told them what happened. The child found me outside at the corridor, I did not enter the house. I waited for police to come.”

14. On cross examination, he stated that, “I had arrived home at 9.30 P.m. I slept after eating because I was tired. I slept around 10.00 P.M. I am a neighbor of accused. Muiruri called me and told me there were screams. I was asleep so I did not hear screams, it is Muiruri who woke me up. I heard the screams when Muiruri woke me up. Myself and Muiruri were the first ones to go to the scene. There were some people outside the Boma. There were two vehicles, a double cabin and a saloon. The accused was tied to a palm tree. The legs of the accused were tied to a palm tree with a piece of cloth. She was tied on the hands and legs. The hands were tied to the back and tied to a palm tree. To me she was tied by someone because her hands were tied to the back. I untied her legs. Muiruri untied the hands. She heard me from my side and stopped screaming. The screams I heard were made by the accused not many people. There was light at the corridor but at the tree it was dark. From the house to the tree was a short distance, indication in less than a metre from wall to witness box. The light was from corridor. I was left at the compound and there were many people. I knew the accused as she is my neighbor. That is why I took her child to my house for safety. I had never entered the compound. That was the first time to step there. At the gate I found a TV and three tissue papers rolls. Muiruri came with policemen. They found many people. I did not enter the house. I did not enter the bedroom. I can’t tell where the body was or how it was. I don’t know the charge the accused is facing.”

15. PW4 Leonard Githinji Mugendi, testified that, “I stay at Runyenjes. I am a Bar Manager. I used to manage the bars of the deceased in this case. I also used to manage his farms which were at Runyenjes and Manyatta. I started to manage the four bars of the deceased since April in 2017. I used to communicate with him. He used to work at Kirinyaga so we used to talk about the business. The deceased had women. The deceased told me his wives were Cecily Maitha and Charity Gichura. I know the two wives. When the deceased was transferred from Kirinyaga to Garissa, in December he fell sick and went to hospital at Tenri. He did not want to go to Garissa. He called me to his club and he told me he feared for his life because his wife had been calling him and he had not gone there since May and that at that time she was calling him. The deceased told me he had told his wife Cecily to give her Kshs 100,000/- as no money had been going to his account. She told me that when he went to the house of Cecily Maitha, she had taken his phones. He told me he had nothing against Cecily and could not tell why they don’t agree with Cecily. He told me he had a gun which was loaded and can’t shot anybody but people hate him. He told me that he had properties I did not know. He told me that Nile club is his he owns a plot at Karatina measuring 100 x 100, a Plot at Blue valley Embu, One Acre at Muraru on the way to Kiritiri. He told me that the house where Cecily Maitha was living was not his but belonged to the sister of Cecily. He told me he owns a Nissan Shuttle KCG 530S, Prado KAX 801. I knew he had KBY 377, KBW 670W which he had given me and I had it. A Mercedes KAX 260, A Double Cabin KCE 208H. The shamba at Mukuri had a club which I was managing. The clubs I was managing were in leased premises. He had a shamba at Manyatta. He told me he feared about his life as there were many people who were against him. The deceased told me never to have a secret meeting with Cecily Maitha who was his wife and he feared for his life with her. He said their life was full of

quarrels and because of the grudges he had with Cecily he had decided to build a house at home and marry another wife who would listen to him. I received a call from the brother of Gitonga who is younger than him called James Njagi. He told me there was a big fight in the house of Gitonga. He told me there were thieves in the house of Gitonga and his wife had said he was hit on the head. He told me to go with a vehicle to take him to hospital. I went to the home of Gitonga and met many people and Policemen. I went to the compound and found Cecily sitting somewhere. She did not talk to me when I asked her what happened. I went and asked a police officer what had happened. He told me to wait. I told him I could take him to hospital. The policeman told me the deceased was totally slaughtered. The police led me inside the house I saw Gitonga and the neck was severed and the head was held by a small muscle at the back and the white trachea was out. There were massive bloodstains where the body was. Gitonga was already dead. Police took the body to the mortuary.”

16. On cross examination, he stated that, “I recorded a statement on 30th May, 2019 which is the one you have. I recorded it based on what I was asked. I was not asked about the relationship with Gitonga that is why I did not record what I have told the court. I still work as a manager but not for the estate of the deceased. I am related to Gitonga as he is my uncle, my father is his younger brother to him. After Gitonga died myself and the brothers of Gitonga received threatening messages demanding Kshs 1,000,000/-. The message was sent to David Kariuki on the phone. It said they wanted 800,000/- and if he and myself don't give him, the mother who was left would face some consequences. We came to the DCI Kerugoya to report about the messages. We were not assisted to have the numbers investigated. We also reported at CID Embu. Gitonga died on 29th and there were people who expected to be paid. I had a big debt of the salaries of employees. I closed the premises. The deceased had told me he was surrounded by people who did not mean well to him. He did not tell me who they were or whether business related. I can't say it was business related as I did not know his business in Kirinyaga and business associates. I can't know whether the same people are the same ones who sent text messages. He specifically told me not to have any secret meetings with accused. The deceased had trusted me so much. I don't know why he told me never to have secret meetings with accused. I was not in good terms with Cecily because she used to call to demand money and I would tell her to call Gitonga. He wanted that I should not sit with accused and discuss him or his business. The brother of Gitonga James Nyaga Zakaria is the one who called me to inform me about the death. I know Murimi who was an employee at the shamba at Kagumo. He had tried to call me but my phone was off and saw they tried to call when I charged the phone. Murimi told me Njagi was trying to reach me so I go to home of Gitonga. I said at 12.00 I switched on my phone and saw Murimi and called him. I called him and he told me to call Njagi as Gitonga had been attacked at his home. The statement says midnight and I said about 10.00 Pm and 11.00 Pm. They are both okay. I met many people. I went in a taxi. Mugambi was the taxi driver. He is Mugambi Kamwereyo. He operates around Embu and Runyenjes. He picked me from Demand Club at Runyenjes. I was very close to the deceased as his manager and my uncle. We had family meetings after the deceased passed on. It was at Makumi Kirimiri. The 1st meeting was after his death. I was present. The accused was not present she attended one of the meetings. I told the family what I have told court that the

deceased felt there were people who were after his death. The deceased did not give me details of the ownership of the properties. There are some I can authoritatively say were his. I did not see any documents of ownership. The deceased told me one time he had a gun loaded with 18 bullets. I don't know if he was a licensed gun holder. I don't know whether he ever used it. The deceased was working as a CDF Manager. The time I started working for him he was working in Kirinyaga as CDF Manager. He was transferred to Garissa as a CDF Manager. I did not know his salary. I was aware according to what he told me that he had two wives. Cecily Maitha and Charity Nyawira. He said they were my mothers. I was not introduced to Charity Nyawira. I first saw her in 2017. I am aware that he had a kid with the deceased, a boy. The boy was about seven (7) years old. I can't tell whether he was a son of deceased. I could not discuss matters of the deceased who is my father and his wife. I last saw Charity here in court when the case was proceeding. It was on 18th June, 2019. I don't know what she is doing at present if she has gone back to her husband I can't be involved, it is her life. I am not aware that she was married. I did enter the bedroom when I went to the scene. I was with an officer from Wang'uru and one from Embu. I met the accused outside next to the garage. There were many people in the compound. I was not the 1st to enter. The police had already entered. We entered together. When I went to the compound the outer doors were locked. I am aware of the charge the accused is facing. I recorded the statement the next day. The deceased never told me who the people after him were. He told me twice or thrice that he feared for his life."

17.PW5 Wanguru Zakaria, testified that, "I stay at Embu. I know the deceased Patrick Njiru Gitonga. He is my son. He was married to Cecily Maitha. They had three children. He had no other wife. He had not brought another wife home but he was saying he wanted to get married. The one he wanted to marry was Mama Amani, I don't know her name. There was a time I went to their home and we discussed family dispute and the problem was solved. I can only remember once. They were living together in the same house. They were living at PI Cecily is a teacher. Gitonga was working with CDF at Kerugoya. I had no problem with Cecily, we had good relationship. She used to come to my house many times. The deceased brought Mama Amani home once when we had a get together. They had one child called Amani. When we had the get together, the deceased called us and Cecily was present and he told me that he wants to marry Mama Amani and would take dowry to her parents. I learnt that the deceased was murdered while asleep in his bed. There was a time Cecily called me and said he would come home. She came and spent the night I called the deceased and told him his wife was there. He told me he would not come. We spent two nights. Cecily showed me her hands holding water and she told me she had worked hard to earn for food and clothing. After that I heard Gitonga had died."

18.On cross examination, he stated that, "It is not true that the parents of Mama Amani came and said she was married and they had refused dowry. I never saw them. Amani is the daughter of Gitonga. Gitonga came with the child when she was a baby and said it was his baby. Under Kiambu customary a man can marry more than one wife. A man can marry many wives. I know Githinji as he is the son of my son called Mugendi. We did sit down as a family after deceased died. I can't remember whether Githinji told me there were people who were threatening his life. I was not aware. There was something Cecily said while holding water in her palm. We were just

the two of us. I don't know what she meant by doing that. She was very annoyed when she said that because she had disagreed with her husband. I called her husband and he refused to come. She told me it was the disputes of her husband. It is usual for them to have disputes. He refused to come when I called him. I did not go to tell police. Police came to my house to record a statement. I did not tell them what Cecily did. I don't know who killed my child."

19.PW6 David Kariuki Njiru, testified that, "I am from Mukuuri. I am an Electrician. On 29.5.2018 I was at church in the night at about 10 - 11 pm at a prayer meeting. I was called by my elder brother called James Njagi. In his call he told me that the brother he follows Patrick Gitonga Njiru had a problem in his home. I told him I was in church and could not attend him at that time as I had no means. Shortly thereafter, I received another call from my sister Jane Wawira. She told me she had been called by Patrick Gitonga's wife that there had been thieves at this house that he had been beaten and was on the ground. She asked I come with a car from where I was. I decided to call my brother James Njagi and explained my sister's call. I was concerned about going with a car because my brother had a car also. I decided that we tell my elder brother Martin Njeru as he was nearer to where I was. I called Martin (now deceased) and went across the road to speak to him as my elder brother face to face. Then I called James again so that he could call Githinji to ask him to go to the home. I left and got into the road to go to Martin's house when I received another call. This call was from Githinji. He said he has a car and was going to the scene. He called again and told me he had reached and found many people at the scene and that he was hearing the deceased had died. I got to Martin's house. He already had the information. We agreed to get a car and go to the scene. On reaching I found many people in the compound. This was about 1.00 pm. I'm not sure if there were lights but I could see many people. As I got to the door a policeman stopped me. I said I was the brother. I was asked if I knew the wife I said yes. The wife Cecilia (in the dock) was brought to the door and said she knew me. We were all outside not in the house. Even Cecilia was outside. We were then allowed to go in. I went in with an askari and Cecilia. I found my brother (deceased) lying on the floor facing upwards with his neck cut. There were lights on in the house. There was blood on the floor and on his bed. Cecilia was not looking good and she was afraid and shaking. After seeing the body, I left the house and went outside. Cecilia is my sister-in-law. This house was my deceased brother's house with Cecilia. My brother had another wife called Purity. After my brother began getting wealthy, he would quarrel with Cecilia. On one occasion I went to their house to sort out a quarrel. It was an argument about a car. He wanted to give her a Note but she wanted a Pick-up Toyota Double Cabin. He wanted her to use the smaller car to save on fuel. My brother stayed in the house with Cecilia and a small baby. On that night I had not seen any injuries on Cecilia. They had been married for quite a while. They had 3 children aged 18, about 15 and 9 years. I wrote a statement at Kiamutugu Police Station the following day."

20.On cross examination, he stated that, "I wrote a statement with the police. When I was called to the scene, it was first by James Njagi at about 10.25 pm. I was at church when the incident occurred. I did not witness the murder. I only saw his body when he was dead. I did not witness death. Deceased had arguments with his wife Cecilia. One was because he had a lot of money. Deceased liked women. Deceased was my elder brother. I was good (close friends with deceased's

friends). Deceased had several wives. He told me he had 4 wives. 1st wife was Cecily the accused. She had 3 children. 2nd wife was also Cecily. 3rd wife was Mercy. 4th wife was called Charity. Of the wives Charity, Mercy and Cecily. Charity had been married and also Mercy had been married elsewhere. The other Cecily was not married elsewhere. Mercy had a child with deceased who was born the week deceased died. There were rumours that deceased had many other wives or girlfriends. Deceased used to keep a gun. I don't know if he was licensed to keep it. It was around 1.00 am when I arrived at the scene. I cannot confirm that I was the first to see the deceased dead at scene. Cecilia (Accused) was outside the house. The house was a bungalow not a storey house. It had a stone perimeter wall. When I reached the house, Cecilia (accused) was inside the compound within the perimeter wall. There were many people there - may be about 50 people. There were 2 of deceased's cars inside the compound. I don't recall if there was a police car inside. That night I did not see any TV or equipment outside. I know Leonard Githinji Mugendi. He is deceased's uncle. He also managed the deceased businesses. I am aware Leonard testified. Deceased reached a stage where he had fears that he was not safe. Peterson Mugendi Zacharia is my blood brother. He testified here."

21. In re-examination, he stated that, "There were 4 wives. Only 2 wives had been introduced families- Cecilia (Accused) and Cecilia (Mama Amani). Mercy had not been introduced. Mercy had a child with deceased. Each wife had a boma. Cecilia (Accused) lived in the house where the incident occurred. Accused had a gun. There was a gun through gut system. Leonard Githinji was my brother. He lived in fear. He said there were people after him."

22. PW7 Jane Wawira Mugo, testified that, "I am from Kanja Location. I am a farmer. On 29th May, 2018 at about 9.30 pm I was telephoned by my brother's wife. It was Cecilia Maitha (Accused). She telephoned me on 0704193846. It was a number I did not know. It was not her usual phone. She said they had been attacked and my brother was on the floor. She said I call my brothers so they can take him to hospital. I called my brother Njeru, then David Kariuki, James Njagi. I also called a lady called Charity who was my brother friend and asked her if there was his car in her compound. I heard they stayed in Embu. I was telling Charity to go and see what had happened. When Cecilia called, she said what had happened and screamed then all was silent. My phone rang again and I asked who it was. The person answered and said he was a neighbour of Cecilia and he said it was true and we should come. When I spoke to James Njagi, he had asked me which phone called me. I said it was a new phone I did not recognize. I talked later to Njeru and he told me they had gone to the scene. Deceased Gitonga lived at P.I with Cecily Maitha. She was married around 1993 to deceased. I don't know how their relationship was. I don't know if they had problems. I wrote my statement in Wang'uru C.I.D. I was told it was Deceased had a wife Cecilia Maitha with whom they had done Ruracio. The incident occurred at Cecilia's house."

23. On cross examination, she stated that, "I am 52 years old. I am married. I live with my husband. From my home to my parent's house is far. From my home to Deceased's home is also far. On the day of the incident, I did not go to deceased's home. I don't know how deceased died and I did not go there. Up to today I have not gone to deceased's home (Cecilia's). I recognized the sound of her voice on the phone she called me with. She called me "Mama Muthoni". The voice

was Cecilia's for sure. My brother (deceased) had a wife called Cecilia Maitha with whom there was a Ruracio. I called Mama Kevo that is Charity. Charity is the one I used to see with my brother's was (deceased) work vehicles. She was often with my brother deceased. I don't know if Charity was a girlfriend of deceased because I lived far. I don't know what Cecilia is charged with."

24. In re-examination, she stated that, "I don't know how deceased died. I was told he died in Cecilia's house. My brothers told me they did not take deceased to hospital but to the mortuary."

25. PW8 C.I Stephen Kibagendi, currently attached at Registry Criminal Investigation Central Province Nyeri, testified that, "Before that I was DCIO Laikipia. In 2018 I was Deputy DCIO Mwea. On 30th May 2018 I had gone ready to the office. I was told by late Francis Ndege then DCIO, that he had I visited a scene of murder at PI and wished me to take over the case and proceed with investigations. On receiving instructions, he said there was a meeting of all Police Officers. We proceeded to County Headquarters at Kirinyaga and were released at lunch. We had 2 vehicles. I was commanding all vehicles and was instructed to go back to station. He, Ndege went in another vehicle to visit the scene. During the day Ndege came back with the officers he had and told me that before reaching the scene they found young children at the roadside with a phone which children should not have. They stopped and officers chased the children and got the phone. On inquiring whose phone, it was they said they found it on the roadside and were playing with it. Since the children were innocent, the officers took the phone and went to the scene. On arrival at the scene, they found many people there including the Accused. Mr. Ndege then brought the Accused to the station to write a statement. On 31st May 2018 I started the day by calling my colleague Mr. Mwambore to take me to the scene as he had accompanied the DCIO. We went to scene in our station vehicle where. The murder was done in a large wooden house with a stone perimeter wall. The entrance main gate wall was about 12 feet and black. From inside it was locked with 2 padlocks. In the compound there was a stalled stone construction. The land is sloping so there is a parking yard on the stalled building. It had 2 vehicles in one Toyota Pick-up used by the Accused, and another a Toyota Crown Saloon used by the husband. The vehicles were parked in the parking bay. We went to the kitchen which had a small corridor or veranda. We were told that that was the position the Accused was standing polishing the child's shoes before the attack. We entered the kitchen where then were 2 large sharp clear knives. The Accused said the knives were used for slitting the deceased. She had washed them. On the left was the bedroom of the last born aged seven (7). Before you enter the child's bedroom you enter the sitting room. It had wooden sofa sets - large ones; looking at the entrance to the sitting room the main door was locked. In the kitchen which is on the right there is a corridor leading to the bedroom of Deceased and Accused. There was a small room like a store before you reach Deceased bedroom. In the bedroom the bed had an 8" mattress and sheets and a net. There was a lot of blood on the top where the deceased had lain. The wall was splashed with blood all over. We recovered the knives as we were with the scenes of crime officers. The body had been taken the night the DCIO went there. The bedsheets and mattress were taken by the DCIO and his team to the Police Station. They were full of blood. I did not see blankets. The mattress and bedsheets are not here. We left the bedroom and went to the place where accused claimed she was tied

when the murder occurred. The Accused was present showing us what was happening at the different places. The Accused told us that on 29th May at around 7 pm there was communication with deceased husband that he was to go there. He said to her he was willing to eat some greens and mukimo - she prepared spinach and ugali. Husband came and they ate. She ate bananas. This was about after 7.00 pm. After eating the child had assignments and did them and went to bed. She said, the deceased had a call with the 2nd wife and there was an argument on phone. The husband went to sleep. She told us that wherever he comes he removed his clothes and is given a lessso to go to bathroom and that is what he did that day. She said he bathed and went to bed. She said she was in the kitchen preparing for the next day and polishing child's clothes. She said that at about 9 pm as she polished the child's shoes, she heard some scratches at the main gate; and that it was their cat struggling to enter at the gate. Whilst polishing the shoes she saw 3 men coming from the distance at the main gate and came to parking yard about 10 metres away. She did not run. The men moved to where she was without talking and one of them got hold of her. He told her not to scream. He moved her to the left side at the kitchen and they started walking behind the house. Whilst on the other side she said, the man told her they must have sex, and she pleaded saying she was on monthly periods. He accepted. The man went with her looking for something to tie her with. They got to a palm tree at the entrance to the sitting room. Whilst there she said she heard a scream of the husband. Whilst there, she saw some movements of a man walking from kitchen toward the vehicles. One of them opened a vehicles door, did some search and went back. The two men then communicated with the man who was with her. One man went to the house and came with a lessso and table covers and towel. That man assisted the man who was with her to tie her against the palm tree. I produce 3 table cloths white, a towel which is pink and 2 lessso as P. exhibit. 1a for table cloths 1b for pink towel and P. exhibit 2 for lesssos. These were used to tie her at her stomach, legs and mouth against the tree. The people left her using the kitchen door and carried 32" TV gas cylinder; they poured down some dry foodstuffs. The TV and gas cylinder were recovered intact at the main gate. On inquiring her how the people opened the vehicle she said the husband had a single key for Toyota Crown and that night when the husband came, he parked the vehicle he went with the key into the sitting room and left the ignition key on a sofa set. We asked her why the people went to deceased's vehicle not hers and she said because he was always armed. And because they normally fight, the husband had decided to be keeping his gun in his vehicle. The vehicle was checked and nothing was recovered. The thug must have returned the key on the sofa set as that is where we found it in a single key plus a plastic tag for the vehicle. The key was recovered. I have not seen the key. She told us she had locked the main gate but they came from main. She told us that the thieves must have taken the phones of the deceased and his gun from the car or house. She told us that after about 15 minutes after the thugs left, she screamed and an immediate neighbour heard. But because of this high wall, the lady got a stool and used it to see into the compound and asked what was the problem. She said "wezi" wameenda pande hiyo" The neighbour then went and called her son and told him thugs had invaded the neighbour. The son and the lady neighbours went round the compound entered through the main gate and found her standing but loosely tied. I forgot to indicate that at the time Accused was asked for sex she was made to remove her clothes. However, no sex occurred because she said she was on her periods. At the time she was

taken to the tree she was naked. As investigating officer, I took statements and read what was on file, visited the scene and saw for myself the phones, cylinder, and read the various witness statements, I formed the opinions that the Accused was the one who conspired with the thugs to kill the deceased as all the evidence was pointing on that way. Accused told me the two knives in the kitchen had blood but she washed them. After she was untied Accused was adamant that no one should go into the house and made sure no one should enter. However, the young man who untied her had got a boda boda guy who entered the bedroom and saw the deceased on the bed and they did not tell anyone except the police at PI. It was confirmed that the phone found with the children belonged to her husband. Another phone which was found outside the compound by a lame person and given to the police was also confirmed to belong to the Accused. The deceased gun was never recovered. The two phones recovered were taken to CID cybercrime for analysis by Corporal Mwambele and the results came from cybercrime. There are the results which were. Photographs were also taken. I have not seen the photos. I did my best. There was friction. I was transferred and handed over the file to Mr. Mwabele. The case that then brought to County Headquarters Kerugoya and moved away from Wang'uru. Since then, I don't know what happened after I was transferred because there were other interests."

26. On cross examination, he stated that, "Shown his statement, I recorded it is mine. This one is typed. I recall I recorded my hand written statement around August/September 2018. It is correct my mind was fresher then about the case than it is now. I was the investigating officer. The accused told me the 2 knives were washed. It is not recorded in the statement. Accused told me she heard scratches at the gate. This is not in the statement. That the keys of the car were on the sofa set is not in the statement. The Accused had told me the deceased carries a pistol. It is not mentioned in the statement. That Accused said no one should enter the house was in the statements of the witnesses. It is not in my statement. I have found the place in the statement where the Accused was stated to have said no one should enter the house. The Accused herself did not tell me so. The murder occurred on the night of 29 May 2015 at around 9.00 pm. The police arrived at the scene at 11.00 the same night. I was not one of the officers at the scene on 29 May 2015. I did not visit the scene that night. On 30th May 2015 I did not visit the scene. I visited the scene on 31 May 2015 in the morning hours. I went to scene with Corporal Mwabele & the driver. Mwambele had visited on 29th May 2015. On 31st May 2015 the Accused was in the police cells and took her with me. Accused was arrested and placed in cells in the afternoon hours when the DCIO visited and came with her. She was arrested after I argued with DCIO and I visited she was arrested as I was the investigating officer. When she came to the police station the DCIO Francis Ndege had visited the scene and I had not. Despite this I insisted she should be arrested. I recorded about 7 witness statement other officers also recorded statements. There was no eye witness. It was not possible to take fingerprints because only the knives could have held then. The body had been taken immediately on 29th May. The cell phones remained with PC Mwabele who forwarded them to cybercrimes. I don't know where they are. Accused told me how the vehicles were parked. It was the normal place for parking. The gate had a pedestrian entry. Accused said she had locked the main entrance. I went round the compound and concluded the thugs went through the main gate. Accused told me deceased kept a weapon. I did not confirm

whether the deceased was a licensed firearm carrier because I did not get a gun serial number or certificate of chief firearms officer. I got information on lifestyle of deceased from family and other witnesses. Put to: All you have said is hearsay and that you were not assigned as investigating officer. Witness: Not correct. Put to: No evidence links Accused to offence. Witness: The Court will decide. I had differences with my boss because he had instructions from other quarters which I cannot mention. The knives are not exhibited and they were cleaned. Accused told me she cleaned them after she found them in the kitchen with blood stains.”

27. In re-examination, he stated that, “The 2 knives were washed. I did not indicate so in my statement. This was subject to further investigations. I saw them on 31st May. They were not blood stained. Accused told me that the knives were the murder weapons. On the car keys, the thugs got the Accused’s keys and opened it and switched the car and took keys back to sitting room. They only went to deceased’s vehicle. She told me they were looking for pistol. I am the one who insisted Accused be incarcerated. She was arrested on 30th May in the afternoon. We would have used the keys as exhibits. The 2 phones should be exhibits in Court. I don’t know where the phones are. Accused and 2nd wife all confirmed the Deceased kept a pistol. On 29th night the DCIO, Corporal Mwabele and the driver visited the scene. I don’t know if any other police officer visited the scene. Uniformed officers collected the body that same night. I don’t know who they were. I don’t know if scenes of crime officers went to the scene on 29th May night. I don’t know if any officer secured the scene from 11.00 pm on 29th May 2015. I don’t know if scenes of crime were there on 29th night. On 31st May some photographs were taken by an officer from scenes of crime. I have never seen the pictures.”

28. PW9 Dr. Ndungu Karumo, a Medical Officer at ACK Mt. Kenya Hospital in Kerugoya, stated that the cause of the death of the deceased was penetrating neck injury.

Submissions

29. The prosecution did not file any submissions.

30. The accused urges that the prosecution has not met the test of a prima facie case as set out in *Ramanlal T. Bhatt v Republic* [1957] E.A 332, to warrant being put on her defence. She urges that repeated domestic grievances are not proof of malice aforethought, and cites *Sawe v Republic* [2003] KLR 364. She urges that PW8’s reconstruction of the events of the fateful day is speculative, unsafe and inadmissible, as he visited the scene 2 days after the fact. She urges that the evidence presented by the 9 prosecution witnesses was wholly circumstantial, inconsistent, speculative and unsupported by forensic or direct evidence linking her to the death of the deceased. Further, the investigation was riddled with glaring gaps and material omissions which fatally weakened the prosecution’s case, and cites *Abanga allas Onyango v R* (Cr. App 32/1990) (U.R). She urges that no evidence was adduced to demonstrate that she intended to kill the deceased, and cites *Joseph Kimani Njau v Republic* [2014] eKLR, *Republic v Eyanae* (Criminal Case E002 of 2022) [2024] KLR and *David Kiokemboi Ngetich v Republic*, Nakuru Criminal Appeal No. 276 of 2006 (CA). She cites *Woolmington v DPP* (1935) AC 462, *Republic v Derrick Waswa Kuloba* [2005] eKLR, *Miller v Ministry of Pensions* [1947] 2 ALL ER 372, *Kanini Muli v Republic* [2014] KECA 870 (KLR),

Tuwamoi v Uganda [1967] EA 84, Republic v Abdi Ibrahim Owl [2013] eKLR and Anthony Ndegwa Ngari v R [2014] eKLR to buttress her submissions.

Analysis and Determination

31.The prosecution has the burden of proof against the accused to present sufficient evidence to support each of the elements of the offence of murder. The ingredients of the offence of murder contrary to section 203 as read with 204 of the Penal Code, which is what the prosecution is required to prove in a murder trial, have been well settled as; 1) The death of the deceased occurred, 2) The death was through unlawful acts or omission of the accused. And 3) The accused person had malice aforethought. See Republic v Nyambura and 4 Others (2001) KLR 355.

32.Having considered the testimonies of the nine prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused, or in other words whether the accused has a case to answer for the offence of murder contrary to section 203 of the Penal Code.

33.The death of the deceased is not disputed. PW9 opined that the cause of death was penetrating neck injury.

34.The issue for determination is whether it was the accused who committed the unlawful act which caused the said death of the deceased.

35.There is a concession that the case was purely circumstantial as there was no eyewitness to the murder. It is trite that for an inference of guilt to be drawn from circumstantial evidence as a basis of a conviction, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (See R v Kipkering Arap Koskei & Anor (1949) 16 EACA 135), because mere suspicion, no matter how strong, cannot found a basis for conviction. (See Sawe v R [2003] KLR 364).

36.The burden of proving the facts which justify the drawing of the inference of guilt based on circumstantial evidence is always on the prosecution, which must establish its case beyond reasonable doubt. (See Wambua & 3 Others v R [2008] KLR 142 [C.A]).

37.PW1, a brother to the deceased testified that -“Their relationship had disputes which used to be determined. The deceased was my younger brother. I had resolved about five disputes. The only allegation is that the deceased had several women in his life. The deceased used to refer to other women as his wives. One was Nyawira another was mother of Amani. The only problem that we discussed is that the deceased had many women. We had sat to resolve the dispute five times. The accused is the one who had complained on all occasions. In December 2016 my brother had come home with another woman, the one I said is Mama Amani. The deceased said his wife was giving him problems, that is Mama Nyakio the accused, had given him enough problem and he had had enough and would leave her and marry another wife and take care of his children. The deceased had come with accused and Mama Amani.” On cross examination, he stated that, “I saw the vehicles and the television set in the compound. A Policeman told me to

see that the door was not broken. He first showed me the main gate. I told him it was not broken. I checked. I did not see any weapon. I am not aware that the deceased had attempted to commit suicide. I can't tell who caused the death of deceased or how it was caused."

38.PW2 and PW3 were the first persons to respond to the accused's cries for help. When they arrived at the scene, they found her tied to a palm tree with her hands bound behind her back, and her stomach and legs tied with a piece of cloth. She was naked, and they immediately untied her. The accused, who was screaming and crying, took a leso from a nearby hanging line, covered herself and told them to go into the house and assist the deceased. After the police completed documenting and processing the scene, they instructed them to return the T.V, a gas cylinder and tissue pack, found outside into the house.

39.PW4, a nephew to the deceased, testified that, "He called me to his club and he told me he feared for his life because his wife had been calling him and he had not gone there since May and that at that time she was calling him. The deceased told me he had told his wife Cecily to give her Kshs 100,000/- as no money had been going to his account. She told me that when he went to the house of Cecily Maitha, she had taken his phones. He told me he feared about his life as there were many people who were against him. The deceased told me never to have a secret meeting with Cecily Maitha who was his wife and he feared for his life with her. He said their life was full of quarrels and because of the grudges he had with Cecily he had decided to build a house at home and marry another wife who would listen to him." On cross examination, he stated that, "After Gitonga died myself and the brothers of Gitonga received threatening messages demanding Kshs 1,000,000/-. The message was sent to David Kariuki on the phone. It said they wanted 800,000/- and if he and myself don't give him, the mother who was left would face some consequences."

40.PW5, the father of the deceased, corroborated PW1, PW4 and PW6's testimonies that the deceased and the accused had persistent marital disputes, in the resolution of which they had on several occasions intervened. PW4 and PW6 were categorical that, prior to his death, the deceased had expressed fear for his life.

41.PW8, the investigating officer, testified that when he visited the scene on 31/5/2018, 2 days after the incident, he learnt from the onlookers that shortly before the attack, the accused was polishing her child's shoes outside. Upon correlating the witness statements and the information gathered during the scene visit, he formed the opinion that the accused had conspired with the assailants to kill the deceased, and consequently caused her to be arrested. The prosecution's failure to adduce any digital evidence to establish communication between the accused and the assailants before, during or after the commission of the offence, negated the alleged conspiracy to murder the deceased.

42.Although the investigating officer contended that the accused had informed him that she had washed the 2 knives, allegedly used in the commission of the offence and that the deceased owned a firearm, those contentions were recorded in his statement, which had been made shortly after the incident when the events were still fresh in his mind.

43.The 2 mobile phones belonging to the accused and the deceased were allegedly forwarded to the Cybercrime Department for forensic examination, yet neither phone was subsequently retrieved for production before the court.

44.Equally troubling was the failure to produce the 2 knives said to have been the murder weapons. The explanation advanced was that the knives had been washed, thereby compromising their evidential value. The washing of the alleged murder weapons deprived the investigative bodies of the opportunity to subject them to meaningful forensic examination to capably connect them to the deceased or the accused.

45.This court is thus satisfied that the inculpatory facts are compatible with the innocence of the accused, and capable of explanation upon other reasonable hypothesis than that of her guilt.

46.The court finds that the prosecution failed to adduce sufficient evidence connecting the accused to the commission of the offence.

Accused had Malice Aforethought

47.While a troubled marriage may explain why the accused might harbour resentment towards the deceased and possibly constitute a motive, it does not establish that the accused actually procured, facilitated, or participated in his killing.

48.The Court of Appeal in *Choge v Republic* (1985) KLR 4, held as follows: “Under section 9(3) of the Penal Code (cap 63), the prosecution is not required to prove motive unless the provision creating the offence so states, but evidence of motive is admissible provided it is relevant to the facts in issue. Evidence of motive and opportunity may not of itself be corroboration but it may, when taken with other circumstances, constitute such circumstantial evidence as to furnish some corroboration sufficient to establish the required degree of culpability. The evidence of the ill-feeling between the deceased and the 1st appellant would have been a corroborative factor if the other evidence had been satisfactory which it was not.”

49.The evidence of marital disagreements, the deceased’s expressed fear for his life and the information supposedly gathered by the investigating officer from onlookers 2 days after the incident, undoubtedly give rise to suspicion. But suspicion, however strong, cannot take the place of proof beyond reasonable doubt. See *Sawe v R* [2003] KECA 182 (KLR).

50.To require the accused to testify by a finding of case to answer would be to require her to supply information as to what had transpired leading to her alleged killing of the deceased, and this would be tantamount to requiring her to prove her innocence, by, say, showing that she was acting on provocation or in self-defence.

51.On its evaluation of the evidence, this court finds that the circumstantial evidence relied on by the prosecution was so weak as to amount to a mere suspicion and cannot be a sound basis upon which the accused can properly be called upon to answer the charge.

Orders

52. Accordingly, for the reasons set out above, in accordance with section 306 (1) of the Criminal Procedure Code, having found that there is no evidence that the accused committed the offence, the Court shall record a finding of not guilty, and acquit the accused of murder contrary to section 203 as read with 204 of the Penal Code.

53. The Court, therefore, directs that the accused's surety for bail pending trial is discharged and the security shall be restored to the depositor.

54. File closed.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF SEPTEMBER 2026. EDWARD M.

MURIITHI JUDGE
Appearances: Mr. Mwangi for DPP, Mr. E. K. Njagi with Mr. Nyairo for Accused.

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