Maina & another v Republic (Criminal Appeal 339 of 2019)
[2025] KECA 2296 (KLR) (19 December 2025) (Judgment)

Neutral citation: [2025] KECA 2296 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPEAL 339 OF 2019

MS ASIKE-MAKHANDIA, HA OMONDI & LA ACHODE, JJA

DECEMBER 19, 2025

BETWEEN

ELIJA MAGUTI MAINA .... 1ST APPELLANT

AGNES NYABOKE MAINA .... 2ND APPELLANT

AND

REPUBLIC .... RESPONDENT

(Being an appeal from the judgment of the High Court at Nyamira by (E.Maina J, dated 19th July 2019 in HCCRC NO. 57 of 2015)

JUDGMENT

1. On the evening of 20th January, 2015, a scream rent the night air of Kenyerere village in Masaba North Sub-County within Nyamira County. The screams were coming from the home of one Christopher Maina Muma, (the deceased). His brother PW1 and his two nephews namely PW2 and PW5, converged in the home to find out the cause of the alarm. They found the deceased covered in blood and with visible injuries on his face. He informed them that his son Elija Maguti Maina the 1st appellant and his wife Agnes Nyaboke Maina the 2nd appellant herein had injured him.

2. The deceased was rushed to hospital where he succumbed to the injuries ten days later. Consequently, the appellants were arrested and arraigned in the High Court of Kenya at Nyamira for his murder contrary to Section 203 as read with Section 204 of the Penal Code. They pleaded not guilty to the charge and the case went to full trial. The prosecution presented eleven witnesses to prove their case, while in their defence, the appellants opted to give unsworn testimonies and called no witnesses.

3. A synopsis of the case before the trial court was that PW1, Lawrence Osoro Tiberius, a brother to the deceased was one of the first people to arrive on the scene following the scream on the evening of 20th January, 2015. He met the deceased emerging from his house covered in blood and with injuries on the

face. The deceased told him the appellants had wounded him. PW1 took him to Keroka hospital where he was admitted for treatment. Ten days later, PW1 learnt that the deceased had died at a hospital in Nakuru.

4. PW2, Felix Ogaro Momanyi, a nephew to the deceased, also heard a scream on the material evening, but it was that of his cousin Thaddeus PW5 calling for help. He ran to the scene and met the deceased at his gate;his uncle and other neighbours were already at the scene. He too saw the injuries and the blood on the deceased and heard him say the 1st appellant inflicted the injuries on him. He helped the deceased to the road to find transport to take him to hospital while PW5 joined other youth in the man hunt for the 1st appellant, who was named as the assailant.

5. The encounter of PW3, Thomas Momanyi Ndege the area Chief, with the deceased concerning his death began on 19th January, 2015 when the deceased reported to him that the appellants had threatened to kill him for warning them to stop drinking. He advised the deceased to file a report with the Keroka police the following day. He spoke with the deceased the next day on 20th January, 2015 at about 11am and the deceased told him that he had not yet made the report because he had something to do in a certain school first. That evening at 8pm, a brother of the deceased informed PW3 that the deceased had been assaulted by the appellant. Later that evening, the 1st appellant was brought to PW3 under citizen's arrest. He rearrested him and escorted him to Keroka police station. Days later, he learnt that the deceased had passed away.

6. PW4, Henry Maina Muma is the brother of the deceased who lived in Nakuru. He got the report of the assault from a son of the deceased. He visited the deceased twice in Nyamira hospital, and had him transferred to Nakuru because he required specialized attention at the Eye Unit. In Nakuru, the deceased underwent the eye operation, but died a few days later on 30th January 2015.

7. PW5, Thaddeus Omwenga Rosana, a nephew to the deceased was attracted to the scene of crime on the fateful evening by the deceased's cry for help. He found the deceased injured and his face covered in blood. PW5 asked him who had cut him and the deceased told him that his son Elijah Maguti and his wife Agnes had injured him using a machete and a hoe. PW5 helped to get him to the road from where he was taken to hospital. PW5 and other youth went after the 1st appellant and arrested him a short while later, at his aunt's home some two kilometers away. He stated that he had met the deceased earlier that evening between 5pm and 6:30pm and he had not seen any injuries on him.

8. PW6, Angela Kerubo Muma a sister to the deceased confirmed that on the fateful evening, one of her nephews called to inquire whether the 1st appellant who is also her nephew was in her home. He was not with her but he arrived a short while later. She alerted PW5 who came with other youth and arrested him.

9. Daniel Toya, PW7, was the officer on crime stand by duties at Keroka Police Station. He is the one who re-arrested the 1st appellant on 20th January 2015 and the 2nd appellant on 21st January 2015 respectively, from PW3 the Area Chief. The two had been brought in with a report that they had assaulted the deceased. He booked them for the offence of assault. He also recovered a hoe, a machete, blood stained long trouser and a 'leso' at the scene.

10. CPL Jonathan Chepkonga of Directorate of Criminal Investigations (DCI), PW8, then attached to Keroka Police Station, took over the investigations on 5th February 2015 following the deceased's demise. He sent the blood stained long trouser to the Government Analyst for analysis, recorded the witness statements and charged the appellants.

11. PW9, Elizabeth Waithera Oyiengo the Government Analyst, analyzed the blood stains on the hoe, long trouser and 'leso' and found that they matched the blood samples from the 1st appellant and the deceased.

12. PW10, Dr. Titus Ngulungu, the Government Pathologist at War Memorial Hospital in Nakuru, performed the postmortem on the body of the deceased on 2nd February 2015. He found: multiple lacerations distributed on the scalp; the lungs had collapsed and were logged with fluid and the liver had altered colour, both due to heart failure; blood clots beneath the skin; and, swollen brain. He attributed the cause of death to massive blood loss with features of heart failure due to multiple blunt force trauma to the head and chest.

13. PW11, Cpl John Napikwe produced the machete in evidence.

14. At the close of the prosecution's case, the appellants were placed on their defence. Each gave a sworn statement and called no witness. The 1st appellant stated that he was away at work all day on the material day and when he returned home in the evening, some men came and arrested him. The men informed him that his father had been killed. He denied the offence.

15. The 2nd appellant also denied the offence. She stated that she was at home in the kitchen cooking while the deceased was in the main house that evening, listening to the radio and warming himself from a charcoal stove. She heard the deceased cry out that he had been killed. She went into the house and found him on the ground sweating profusely. She shouted for help and his brothers came to help him, and took him to hospital. She said she did not know who killed the deceased but she suspected that it was robbers who were after the money he had realized from the sale of bricks and timber that day.

16. Upon evaluating the evidence in its entirety, Maina J rendered her judgment on 29th July 2019 and found that the prosecution had proved its case against each appellant beyond reasonable doubt. She convicted both of them and sentenced each to 25 years imprisonment, provoking this appeal.

17. The two appellants filed this appeal contesting both conviction and sentence. In their grounds of appeal they contended that: the trial court 'wrongly relied on a dying declaration'; the cause of death was not properly founded; the court relied on a 'doubtable scientific analysis'; and, the learned Judge wrongly rejected the 1st appellant's alibi defence.

18. The appellants filed joint submissions dated 4th July 2024, through the firm of Byron Menezes Advocates and urged that relying on the evidence of a dying declaration, and not withstanding Section 33(a) of the *Evidence Act*, the court ought to ensure that the statement is corroborated, and warn itself of the dangers of relying on it. Counsel argued that PW3 the Chief, did not produce the report made to him by the deceased the previous day, concerning threats to his life by the appellants and that the report may have been based on fear.

19. Counsel cited the case of Pius Jasunga V R [1954] 21 EACA 331 in which the Court of Appeal stated that even though as a rule of law, corroboration is not required of a dying declaration, courts should not convict on uncorroborated dying declarations. He also cited the case of Jane Wangui Mathenge v Republic [1996] eKLR in which the Court relied on the cases of Migezo Mibinga v Uganda [1965] EA 71, Okethi Okale and Others v R [1965] EA 555 and Simeon Mbelle v R (1988) 1KAR 578 to state that three witnesses who claimed to have spoken to the deceased about the cause of his subsequent death, must be considered and evaluated in light of these authorities.

20. Counsel submitted that the statements of PW3, PW4 and PW5 were not dependable to the extent of corroborating the dying declaration. That the 2nd appellant's scream only reiterated the fact that she shouted for help when she realized that the deceased was in danger. It was urged that the scientific

analysis of the blood samples on the exhibits did not corroborate the dying declaration as the exhibits were found outside in the garden and the blood found on them belonged to the 1st appellant instead of the deceased who was said to have been bleeding.

21. Counsel urged that a dying declaration should be admitted with caution since it cannot be subjected to cross examination and in addition, the violence may have occasioned confusion and surprise so as to render the perception of the deceased questionable.

22. Next, counsel contended that the cause of death was said to be massive blood loss with features of heart failure as a result of multiple blunt force trauma to the head and chest, yet there was no blood in the house where the deceased was injured. There was also no evidence that he bled in hospital, nor was there a blood soaked shirt produced in evidence. Counsel cited the cases of Kimatu Mbuvi T/A Kimatu Mbuvi & Brothers v Augustine Munyao Kioko, Civ Appeal No 203 of 2001 [2007] 1EA 139, to argue that like other sciences, medicine is not an exact science, and expert medical opinion is no different. It is not binding on the court although it will be given proper respect.

23. On the 'doubtable scientific analysis' counsel submitted that the Government Analyst's report concerning the blood found on the hoe and the 'leso' was not accurate. The 2nd appellant admitted to having wiped the deceased with the 'leso' yet the DNA on it was said to match the 1st appellant and not the deceased who was said to have bled profusely.

24. Lastly, counsel submitted in support of the appellant's alibi defence that PW2 testified that he did not find the appellants at the scene when he arrived in response to the scream;that PW1 on his part only found the 2nd appellant at the scene and not the 1st appellant; and thato one saw the 1st appellant before or after the assault, in the home of the deceased. The witnesses knew that he lived with his aunt, and that is where they traced him later that evening to arrest him and no blood or injuries were found on him.

25. Counsel referred to the case of Charles Anjare Mwamusi v Republic CRA no. 226 of 2002 where the Court of Appeal said that an alibi raises a specific defence, and an accused person who puts it forward as an answer to the charge preferred against him, does not in law assume any burden of proving it. It is sufficient if it creates a doubt in the mind of the court. He referred to the case of Benson Mugo Mwangi v R [2010] eKLR where the Court found that failure to give the appellant's alibi defence a fair, objective and open minded consideration was unfair.

26. In mitigation, counsel urged that both appellants are first offenders, and further that the 2nd appellant was old and had fractured her leg. He urged the Court to invoke the decision of Francis Kariokor Muruatetu and Anor v R: Katiba Institute and 5 Others (Amicus Curiae) [2021] eKLR, and the Sentencing Policy Guidelines 2023, and reduce the sentences.

27. Julius K. Chirchir, the learned Senior Assistant Director of Public Prosecution filed submissions date 9th May 2025 on behalf of the respondent in opposition to the appeal. He submitted in reliance of the case of Joseph Githua Njuguna v Republic (2016) e KLR, that the three elements required to be proved beyond reasonable doubt to secure a conviction for murder are: the death of the deceased and the cause of the death; that the appellant committed the unlawful act which caused the death of the deceased; and, that the appellant harbored malice aforethought in doing so.

28. Counsel submitted that there was no doubt that the deceased was dead, and that from the evidence of PW10 Dr. Titus Ngulungu, the cause of death was massive bleeding with features of heart failure as a result of multiple blunt force trauma to the head and chest. Further that these features were in keeping with a fatal assault or homicide.

29. Counsel contended that although there was no direct evidence to link the appellants to the offence, the circumstantial evidence strongly linked them to the murder; That before his death the deceased informed several witnesses at the scene that he had been attacked by the two appellants and this confession amounted to a dying declaration as provided under Section 33(a) of the *Evidence Act*. Further that the deceased lived with the appellants in his home.

30. Counsel urged the Court to take into account that the dying declaration was consistently repeated to several witnesses whose evidence was not shaken on cross examination. Also, that the 2nd appellant confirmed that she was the one who screamed causing people to come to the home and thus placing herself at the scene. For the test of circumstantial evidence, counsel relied on the case of Sawe vs Republic [2003] KLR

31. Counsel submitted further that the dying declaration was corroborated by the evidence of PW9 the Government Analyst, who stated that the blood found on the hoe had the DNA of the 1st appellant, while the blood on the 2nd appellant's 'leso' had the DNA of the deceased. He cited the case of Philip Nzaka Watu vs Republic [2016] eKLR where the principles of admissibility of a dying declaration drawn from Section Section 33(a) of the *Evidence Act* were stated. Further that the deceased died from serious injuries inflicted by the appellants and they ought to have known that such injuries would cause death, which they did. Therefore, malice aforethought was proved.

32. When the appeal came before us for plenary hearing on 21st May 2025, Mr. Menezes learned counsel, appeared for both appellants and relied entirely on his submissions as filed. Mr. Chirchir, learned Senior Assistant Director of Public Prosecutions was present for the State and he too relied entirely on his filed submissions.

33. This is a first appeal and our mandate as stipulated under Section 379 (1) of the Criminal Procedure Code is akin to a retrial. We are required to reconsider the facts and the legal principles relevant to the conviction and sentence. We must conduct a thorough and fresh examination of the evidence, and carefully weigh conflicting testimonies before reaching our own independent conclusions on issues of fact and the law. In doing so, we remain alive to the fact that we did not have the opportunity to hear and observe the witnesses as they testified in order to gauge their demeanour and give due allowance therefor. (See Mark Oiruri Mose vs. Rep [2013] eKLR).

34. With this mandate in mind, we considered the record of appeal and in particular the grounds of appeal, the submissions by counsel and the law. The only contested issue that requires our consideration is whether the circumstantial evidence on record adequately establishes a nexus between the appellants and the offence of murder with which they were charged.

35. The definition of the offence of murder as stated under Section 203 of the Penal Code is that any person who, with malice aforethought, causes the death of another by an unlawful act or omission is guilty of murder. To secure a conviction for murder therefore, the prosecution is obligated to prove three essential ingredients beyond reasonable doubt. These are the death of the deceased and its cause, the identity of the perpetrator, and whether the perpetrator harboured malice aforethought in causing the death.

36. In the appeal before us, PW10, Dr. Titus Ngulungu the Government Pathologist, produced the postmortem report. He examined the body of the deceased on 2nd February 2015 and found: multiple lacerations distributed on the scalp; lungs that had collapsed and were logged with fluid and a discolored liver, both due to heart failure; blood clots beneath the skin; and, swollen brain. He attributed the cause of death to massive blood loss, with features of heart failure due to multiple blunt force trauma to the head and chest.

37. This Court in Republic v Cheboi Kipkoech [2021] eKLR held that a postmortem report is crucial in proving death, and where it aligns with witness testimony, it sufficiently establishes the first ingredient of murder. Based on the findings of the Pathologist, we are satisfied, as was the trial court, that the fact of the death of the deceased and its unnatural cause were firmly proved.

38. The more difficult element to establish is the identity of the perpetrator. None of the witnesses who testified saw how the fatal injuries were inflicted upon the deceased. The evidence against the appellant is therefore circumstantial.

39. This Court discussed the test for circumstantial evidence in Sawe v Republic [2003] KECA 182 KLR thus:

> "In order to justify on circumstantial evidence the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.
>
> Circumstantial evidence could be a basis of a conviction only if there was no other existing circumstances weakening the chain of circumstances relied on. "

40. More recently in Ahamad Abolfathi Mohammed and Another v Republic [2018] eKLR, the Court of Appeal stated as follows concerning placing reliance on circumstantial evidence:

> " However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -
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> 'It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.'"

41. The Court went on to outline the criteria for assessing whether circumstantial evidence presented in court can uphold a conviction in Ahamad Abolfathi Mohammed supra, as follows:

> " Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Subject person, and to no other person, as the perpetrator of the offence. In Abanga alias Onyango v R Cr. App. No 32 of 1990, this court set out the conditions as follows:
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> 'It is settled law 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 the guilt of the Subject; iii) the circumstances taken cumulatively, should from a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.'"

42. The circumstantial evidence in the case before us revolves around what the witnesses saw and heard when they arrived at the deceased's home. Of paramountcy however, is what they heard the deceased say, and which turned out to be a dying declaration.

43. We examined the jurisprudence governing the admissibility of dying declarations and hearsay exceptions in different jurisdictions. In Choge v Republic [1984] KLR 19, KECA the Court of Appeal, (Hancox, Nyarangi JJA & Platt Ag JA), reaffirmed the admissibility of dying declarations under Section 33(a) of the *Evidence Act*. The Court held that such declarations are admissible, where the maker believed death to be imminent. It cautioned, however, that a dying declaration must be received with circumspection and preferably corroborated by other independent evidence. The Court warned that though admissible, a conviction should not rest solely on a dying declaration unless the surrounding circumstances inspire full confidence in its truth.

44. In Nelson Julius Karanja Irungu v Republic [2010] eKLR, this Court, (Waki, Onyango Otieno & Nyamu JJ.A), examined a conviction primarily founded on a deceased's statement identifying the accused as the assailant, and reiterated that by dint of Section 33(a) such statements are admissible, but stressed the exercise of caution. It observed that the deceased's mental and physical condition at the time of making the declaration, and the absence of malice or misunderstanding are material in determining reliability. The Court emphasized that, while admissible, the weight attached to a dying declaration depends on corroboration and consistency with the overall evidence.

45. In R v Andrews [1987] AC 281, House of Lords (Lord Ackner), defined the parameters for admitting spontaneous statements as part of the res gestae exception to hearsay. The Court held that a statement made under circumstances that eliminate the possibility of concoction or distortion may be admitted even though it is hearsay. The test is whether the event was so startling that the declarant's mind was dominated by it, leaving no time to fabricate. Though not a dying declaration case, Andrews remains persuasive authority in Commonwealth jurisdictions for reliability-based admission of statements made in extremis.

46. In S v Ndhlovu & Others [2002] ZASCA 70; 2002 (2) SACR 25 (SCA), Supreme Court of Appeal of South Africa (per Cameron JA) clarified the admissibility of hearsay evidence under Section 3 of the Law of Evidence Amendment Act 45 of 1988. The Court held that hearsay evidence, including statements of deceased persons, may be admitted if it is in the interests of justice, considering reliability and necessity. That the probative value depends on the availability of corroborating evidence and the circumstances in which the statement was made. Though broader than dying declarations, the principles articulated govern their admissibility under modern evidentiary frameworks.

47. In R v Smith [1992] 2 SCR 915, Supreme Court of Canada (Lamer CJ) reaffirmed the principles in R v Khan [1990] 2 SCR 531, Supreme Court of Canada, which introduced the 'principled approach' to hearsay admissibility, resting on the twin criteria of necessity and reliability, replacing rigid hearsay exceptions with a flexible, principle-driven framework later applied to dying declarations. Smith however, went on to state that necessity alone cannot justify admission. The declarant's circumstances must indicate reliability. Smith remains authoritative in reaffirming that admissibility requires a principled balance between evidentiary value and fairness to the accused.

48. A comparative reading of these authorities reveals a shared judicial philosophy, admissibility depends fundamentally on reliability. In Kenya, Section 33(a) of the *Evidence Act* codifies the dying declaration rule but requires corroboration and caution. South African jurisprudence, particularly under Section 3 of the Law of Evidence Amendment Act, advances a discretionary, interest-of-justice standard that accommodates constitutional considerations. The Canadian 'principled approach' merges these concerns, focusing on necessity and reliability rather than formal categories. Collectively, the

jurisprudence shows a movement away from rigid technicalities toward a justice-oriented assessment of reliability and fairness.

49. Across these jurisdictions, the emphasis is that dying declarations, though admissible, must be treated with great caution. The declarant's belief in impending death, mental clarity, and the voluntariness of the statement are crucial. Corroboration remains the best safeguard against miscarriage of justice. The consistent thread from Choge to Smith is that reliability is the cornerstone of admissibility, ensuring that such exceptional evidence advances, rather than undermines, the administration of justice.

50. In the instant appeal, the circumstantial evidence was that PW1, PW2 and PW5 found the deceased in his home when they arrived in answer to the screams. They did not find the 1st appellant at the scene, but PW1 who was the first to arrive found the 2nd appellant in the home. All three witnesses saw the injuries on the deceased's blood drenched head and face. The deceased consistently repeated to several witnesses both at the scene and in hospital that he had been injured by the two appellants. This confession turned out to be a dying declaration as provided under Section 33(a) of the *Evidence Act*. No evidence was led to state that his mental clarity was clouded, or that he did not make those declarations voluntarily. The witnesses remained steadfast on cross examination as to what the deceased uttered.

51. Apart from where the deceased was found and what he said, we found further corroboration in the testimony of PW9 the Government Analyst, that the blood on the hoe had the DNA of the 1st appellant, while the blood on the 2nd appellant's 'leso' had the DNA of the deceased. Whether or not the blood stained exhibits were found outside in the garden, the fact remains that the blood found on them belonged to the 1st appellant and the deceased person. The 2nd appellant's testimony was that when she found the deceased he was sweating profusely. She did not mention the blood that everyone else saw.

52. Further, the 2nd appellant did admit that she was at the scene and that it was she who screamed and attracted people to the home where she lived with the deceased. The 1st appellant was arrested at the home of PW6 his aunt who testified that he arrived shortly after PW5 had called to inquire whether he was there with her. He was agitated and would not get in to the house. He lay on the grass outside and lamented asking why him. Shortly thereafter the youth arrived and arrested him. This evidence together with the testimony of PW3 that the deceased had reported to him a day before that the two appellants were threatening to kill him for trying to curtail their merry making and imbibing the African brew, completely debunked the 1st appellant's alibi defence, and the 2nd appellant's protestations of innocence.

53. We are therefore satisfied that the trial court correctly found that the dying declaration was admissible. Further that the circumstantial evidence points irresistibly to the guilt of the two appellants. The circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the two appellants and no one else. There is no other evidence that may weaken the chain of events.

54. Having so far found, the question that follows is whether the injuries on was inflicted with malice aforethought. Malice aforethought connotes the mens rea, or the intention to kill another person. Section 206 of the Penal Code gives some of the instances as follows;

> 206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances
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> a. an intention to cause the death or to do grievous harm to any person, whether that person is the person actually killed or

b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

1. Malice aforethought does not only exist where the act was planned or premeditated. The manner in which the act resulting in death was committed can itself lead to the conclusion that there was malice aforethought. In Republic vs. Tubere S/O Ochen [1945] 12 EACA 63, the Court outlined several factors essential in determining malice aforethought, including the nature of the weapon used, the manner in which it was applied, the specific body part targeted, and the conduct of the accused before and after the incident.

2. In the present case, the appellants wielded a machete and a hoe, ordinary farm tools that were turned into dangerous weapons, to deliberately inflict injuries to the deceased's head, a critical part of the body, as described by Dr Ngulungu. The circumstances indicate that the act was neither accidental nor impulsive but rather intentional. From the vicious nature of the injuries that were inflicted on the deceased including damaging one of his eyes, it is evident that the appellants intended to kill him, or at the very least cause him grievous harm and therefore, malice aforethought was properly inferred under Section 206(a) and (b) of the Penal Code.

55. Consequently, we find that the appeal is lacking in merit and is hereby dismissed. On sentence we order that the time spent in remand prior to their conviction be taken into account.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF DECEMBER 2025

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR