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Femicide on Trial: The Logics of Gendered Justice in Colonial Kenya, c. 1920-1965

A thesis submitted in partial satisfaction of the
requirements for the degree Master of Arts
in African Studies

by

Lauren Powell Neumann

2026

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ABSTRACT OF THESIS

Femicide on Trial:

The Logics of Gendered Justice in Colonial Kenya, c. 1920-1965

by

Lauren Powell Neumann

Master of Arts in African Studies

University of California, Los Angeles, 2026

Professor Ghislaine E. Lydon, Chair

Femicide, as a subject, has been largely situated within contemporary interdisciplinary scholarship, with many studies relying on statistical and news media data sources only available from the late twentieth and early twenty-first centuries. This thesis historicizes femicide within colonial Kenya's common law courts through an analysis of forty-nine murder cases, tried between 1920 to 1965, collected from the Kenya National Archives. By utilizing this "femicide archive," this study argues that the administration of justice for women's murders was conditional upon how motives of the accused were interpreted by the court. Courts administered murder convictions or mitigation based on how these motives for violence were translated into legally intelligible language and whether they aligned with the colonial state's interests. Through the analytical lens of the "logics of gendered justice," this study examines how gendered assumptions surrounding masculinity, women's morality, and social order shaped the adjudication of femicide within colonial courts.

This study also argues that legal hybridity, or the interactions of Indigenous, Islamic, and British common law, created a legal environment in which motive became the main category through which violence against women was interpreted. The six main cases analyzed in this study are categorized into the three motives of witchcraft accusations, bridewealth disputes, and women's marital abandonment. They reveal that colonial courts interpreted women's death through competing sociocultural and legal understandings of gender, power, and acceptable violence. Through the analysis of various legal and social institutions, this study demonstrates how colonial courts defined what forms of femicide were legally condemnable through upholding murder convictions or excusable through commuting convictions and reducing sentences. This study contributes to African women's and legal histories by elucidating how colonial courts produced gendered legal logics that shaped the legal treatment of femicide, and how women's voices persisted despite the patriarchal constraints of such legal documentation.

Keywords: Femicide, murder, gender-based violence, motives, legal hybridity, colonial, Kenya

This thesis of Lauren Neumann is approved.

Stephanie Bosch Santana

Hollian Wint-Frederick

Ghislaine E. Lydon, Chair

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2026

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Introduction

On September 4, 2018, the body of a pregnant woman was discovered in a forest in Western Kenya's Nyanza Province. The official autopsy results reported that she had been stabbed a total of eight times. She was soon identified as Sharon Otieno, a 26-year-old mother of three, who had been pursuing a degree in Medical Records at the University of Rongo. Her case garnered international attention due to the grotesque nature of her killing and the prominence of the alleged perpetrator: Okoth Obado, the Governor of Migori County. On September 3rd, Sharon had told a reporter, Barack Odour, from the *Nation Media Group*, that once she informed Obado of her pregnancy, he allegedly ceased all communication. In a tragic turn of events, both Sharon and Barack were abducted during that interview. The reporter was able to escape in transit, but Sharon was not afforded the same chance. Sharon's attempt to reclaim her agency, in the face of scorn from Obado, appears to have constituted the primary motive for her fatal attack. Despite growing public demands for justice for Sharon Otieno's murder, this case was not brought to trial for nearly seven years. In September 2025, Obado was charged with aiding and abetting and his aide, Michael Onyamo, was charged with her murder.¹

Available statistics on femicide in Kenya for the year 2024 show that, on average, one woman is murdered every other day, a figure that likely underrepresents actual rates because many deaths are either unreported or not labeled as femicide.² This data minimizes the intense emotional burden Kenyan women, and their families must endure every day. They are faced with the painful reality that police, courts, and the state refuse to acknowledge the severity of the femicide

¹ Damilola Odufuwa, "Kenyan Governor Charged Over Murder of Sharon Otieno," *Cable News Network (CNN)*, September 24, 2018, <https://www.cnn.com/2018/09/24/africa/kenyan-governor-charged-otieno-murder-intl>.

² Africa Data Hub, "Femicide in Kenya," *Africa Data Hub*, accessed December 15, 2025. <https://www.africadatahub.org/femicide-kenya>. Available statistics were collected from media reporting on femicide and does not investigate other reporting channels.

epidemic, despite the existence of laws mandating the protection of women's rights.³ Kenyan women's rights activists have sharply criticized the judicial system for its failure to treat these cases seriously by allowing suspected perpetrators to evade accountability. This lack of urgency further underscores the state's disinterest in securing justice for extreme violence against women.⁴

Opponents of femicide legislation often argue that such gendered laws are unnecessary, because femicide is encompassed within the gender-neutral legal definition of homicide. However, this position ignores the systemic injustices faced by Kenyan women that are only exacerbated by intersecting axes of race, class, ethnicity, and sexuality. Although the term "femicide" was popularized only in the 1970s, gender-motivated killing is not a new phenomenon.⁵ Therefore, to assess the structural conditions and cultural environments conducive to lethal violence against women, this study treats femicide as a legitimate subject. By surpassing arbitrary arguments over the legal legitimacy of "femicide," this study illuminates patterns on the legal treatment of gender-motivated homicide.

Scholars of African legal history have demonstrated that European colonial courts consistently struggled with how to incorporate other legal systems and social norms to best regulate African peoples. Foundational studies reveal the despite colonial legal systems claims of universal authority they became deeply entangled with extralegal social and cultural logics.⁶ Richard Roberts's work on Muslim African experiences in colonial courts, for example, illustrates

³ Kenson Mutethia, "Codification of a Femicide Law in Kenya," working paper, Social Science Research Network (SSRN), July 18, 2025, 2, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5356707.

⁴ Radio France Internationale, "Kenya's Silent Tragedy: A Woman Killed Every Two Days, Justice Nowhere in Sight," *Radio France Internationale (RFI)*, April 2, 2025, <https://www.rfi.fr/en/africa/20250402-kenya-s-silent-tragedy-a-woman-killed-every-two-days-justice-nowhere-in-sight>.

⁵ Marcuello-Servós et al., "Femicide: A Social Challenge," *Current Sociology* 64, no. 7 (2016): 968, <https://doi.org/10.1177/0011392116639358>.

⁶ Kristin Mann and Richard Roberts, eds., *Law in Colonial Africa* (Portsmouth, NH: Heinemann, 1991); Bonny Ibhawoh, *Imperial Justice: Africans in Empire's Court* (Oxford: Oxford University Press, 2013); Saliha Belmessous, *Native Claims: Indigenous Law Against Empire, 1500-1920* (Oxford: Oxford University Press, 2012).

how these forums transformed private disputes of marriage and household relations into publicly moralizing legal debates.⁷ Feminist legal historians and anthropologists further argue that within systems of legal hybridity, women's actions were adjudicated through gendered moral frameworks. Their studies revealed both the legal limitations women faced and the strategies they employed to navigate rapidly shifting legal regimes to contest violence, marital obligations, and restrictive social expectations.⁸ Together, this scholarship positions gender as a productive category to assess how justice was defined, applied, and negotiated within the interactions between Indigenous jurisprudence, Islamic legal tradition, and imperial British common law. However, they have yet to address femicide itself as a historically constituted phenomenon.

This thesis draws on colonial murder trial records from 1920 to 1969, collected from the Kenya National Archives (KNA), to excavate colonial logics of gendered justice. Adopting Katherine Luongo's use of motive as an analytical category, the study interrogates how gender shaped the administration of "justice."⁹ Analyzing motive exposes how colonial common law simultaneously professed to condemn homicide all the while negotiating, mitigating, or intensifying punishment to substantiate patriarchal authority and official legal operations. This study argues that colonial common law courts produced a gendered regime of justice in which the value of a woman's life was contingent upon how women's actions and men's grievances were

⁷ Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts* (Portsmouth, NH: Heinemann, 2005).

⁸ Margaret Jean Hay and Marcia Wright, eds., *African Women and the Law: Historical Perspectives* (Boston: Boston University Press, 1982); Emily Burrill, Richard L. Roberts, and Elizabeth Thornberry, eds., *Domestic Violence and the Law in Colonial and Postcolonial Africa* (Athens: Ohio University Press, 2010); Lydia Boyd and Emily Burrill, eds., *Legislating Gender and Sexuality in Africa: Human Rights, Society, and the State* (New York: Routledge, 2020); Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in African Islamic Court* (Chicago: University of Chicago Press, 1998); Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts, eds., *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-colonial Challenges* (Amsterdam: Amsterdam University Press, 2010); Elke E. Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar* (Cambridge: Cambridge University Press, 2015); Sarah Eltantawi, *Shari'ah on Trial: Northern Nigeria's Islamic Revolution* (Berkeley: University of California Press, 2017).

⁹ Katherine Angela Luongo, "Motive Rather than Means: Legal Genealogies of Witch-Killing Cases in Kenya," *Cahiers d'Études Africaines* 48, nos. 189–190 (2008), 36.

rendered legally intelligible through their respective motives. In other words, convictions of murder were negotiable based on how the colonial court interpreted an accused man's personal injury or property loss compared to the deceased woman's morality.

To interpret the complex interplay between gender, motive, and adjudication over the homicide of women in Kenya from 1920 to 1965, this study centers the analytical framework of "hegemonic masculinities" employed by James W. Messerschmidt. He defines this concept as the dominant forms of masculinity constructed by social institutions that can be used to identify how gendered power and control contributed to systematic violence against women.¹⁰ Historians Kathleen Sheldon and Nwando Achebe have argued that many precolonial societies understood gender roles as complementary, allowing women to exercise social, economic and spiritual forms of authority alongside men.¹¹ Colonial rule disrupted this more egalitarian configuration of gender to impose a hierarchical gender binary.¹² Masculinity became conflated with labor discipline, political obedience, and state authority, while women's autonomy was restricted through the increasing regulation of sexuality, family structure, and land ownership.¹³ This reconstruction of gender in Kenya was heavily influenced by British imaginaries of paternalism, rooted in racism and subjugation of African peoples.¹⁴ This dehumanization manifested most vividly through restrictions on Kenyan mobility in urban centers (such as the *kipande* pass system) and the

¹⁰ James W. Messerschmidt, "Masculinities and Femicide," *Qualitative Sociology Review* 13, no. 3 (2017): 74, <https://doi.org/10.18778/1733-8077.13.3.05>.

¹¹ Nwando Achebe, *Female Monarchs and Merchant Queens in Africa*. (Athens, OH: Ohio University Press, 2020), 21; Kathleen E. Sheldon, *African Women: Early History to the 21st Century*, 1st ed. (Bloomington: Indiana University Press, 2017), 4–5.

¹² Dorothy Louise Hodgson and Sheryl A. McCurdy, "Introduction," in "*Wicked*" *Women and the Reconfiguration of Gender in Africa*, ed. Dorothy Louise Hodgson and Sheryl A. McCurdy (Cape Town: David Philip, 2001), 11.

¹³ Luise White, "Separating the Men from the Boys: Constructions of Gender, Sexuality, and Terrorism in Central Kenya, 1939–1959," *The International Journal of African Historical Studies* 23, no. 1 (1990): 7–9; Paul Ocobock, *An Uncertain Age: The Politics of Manhood in Kenya* (Athens, OH: Ohio University Press, 2017), 254.

¹⁴ Trevor R. Getz and Liz Clarke, *Abina and the Important Men: A Graphic History*, 2nd ed. (New York: Oxford University Press, 2016), 168.

dispossession of land to make room for white settlers.

During colonization, paternalism worked in tandem with the institutionalization of the patriarchy to conflate political authority with masculinity and elderhood, while also enforcing gender expectations that supported the colonial state's goals.¹⁵ The institutional mechanism that appeared to enforce this reconstruction of gender most prominently in colonial Kenya was the common law court system. Historian Tabitha Kanogo argues that the creation of colonial legal systems played a significant role in forwarding colonial patriarchal aspirations. In particular, the creation of "customary law" afforded British and elder African men the authority to mold gender roles and expectations through the exclusion of Black African women.¹⁶ They circumscribed African masculinity as obedient and submissive to the state, and positioned femininity as rooted within the male-dominated domestic sphere. This positioned a woman's "respectable" place within the marriage and family unit, so that women with autonomy appeared as a severe threat to the "moral foundation of society."¹⁷ Historians have also shown that detention camps in the 1950s enforced a similar reconfiguration of gender, as they attempted to replace Indigenous rituals for the social formation of gender with state-sanctioned masculinities and femininities.¹⁸

While this study does not dwell on the reconstruction of gender during colonization, acknowledging this process is essential for understanding how paternalism and the patriarchy were operationalized in the adjudication of women's homicide within colonial courts. Attention to the social constructions of gender clarifies how legal representation was unevenly afforded to women and how legal proceedings functioned as sites of moral judgement. Within the cases in this study,

¹⁵ Hodgson and McCurdy, "Introduction," 7–8.

¹⁶ Tabitha Kanogo, *African Womanhood in Colonial Kenya, 1900–50*, (Athens, OH: Ohio University Press, 2005), 20–21.

¹⁷ Hodgson and McCurdy, "Introduction," 7–8.

¹⁸ Paul Ocobock, *An Uncertain Age: The Politics of Manhood in Kenya* (Athens, OH: Ohio University Press, 2017), 14–15; White, "Separating the Men from the Boys," 19–21; Robert W. Blunt, *For Money and Elders: Ritual, Sovereignty, and the Sacred in Kenya* (Chicago: University of Chicago Press, 2019), 20.

these insights reveal how gendered violence could be perceived as a justifiable method to discipline “transgressive” or “immoral” women.¹⁹ In this context, then, the homicide of women can be seen as intertwined with broader state projects of social control, which created “allowable” forms of fatal violence based on motive. By contextualizing legal and social debates surrounding the motives of witchcraft, bridewealth, and abandonment, this study illuminates how the logics of gendered justice were articulated within colonial courts. Historical cases of femicide in colonial common law courts serve as a site through which to analyze both the structural forces that contributed to, and the lived experiences of those subjected to, violence against women.

Chapter Overview

This study is organized into four chapters. Chapter 1 situates this project historically, theoretically, and methodologically through engagement with African and Africanist historical and anthropological scholarship. It provides a brief history on the adjudication of murder within Indigenous, Islamic, and British courts to argue that colonial murder trials operated in a mode of legal hybridity. Then, moves into a discussion of how hierarchies of power in the archives shaped the availability of legal materials today. This provides context for a discussion on the creation and contents of this study’s legal corpus, the “femicide archive.”

The final three chapters are categorized by motives for homicide because it allows for the analysis of different social, cultural, and economic disputes that lead to instances of fatal gendered violence. Chapter 2 discusses two murder trials motivated by witchcraft. The first was tried in 1940 at Kisumu involving Kisii actors, and the second took place in 1942 in Kitui with Kamba

¹⁹ See Dorothy Louise Hodgson and Sheryl McCurdy, eds., *“Wicked” Women and the Reconfiguration of Gender in Africa* (Portsmouth, NH: Heinemann, 2001), for broader discussions of how the state constructed “transgressive women” as threats to social and political order.

actors. It reviews colonial legislation of witchcraft as it relates to the adjudication of murder, leading up to and during these trials, to examine how the colonial legal system justified leniency for male perpetrators of the homicide of women. Chapter 3 examines two murder trials motivated by bridewealth disputes. The first stood trial in 1928 at Kacheliba with Muslim actors, and the second stood trial in Nairobi from 1950 to 1951 with Kamba actors. It provides social, economic, and legislative context on bridewealth in relation to the institution of marriage. This chapter illuminates how bridewealth disputes acted as sites of legal contestation, wherein murder convictions were selectively applied based on the circumstances leading up to homicide. Chapter 4 examines two murder trials motivated by a woman's marital abandonment. The first case was tried in 1949 at Mombasa between Kamba (likely Muslim) actors, and the second trial took place from 1964 to 1965 in Nairobi with Kikuyu actors. It discusses colonial legislation and missionary imaginaries of the institution of marriage and adultery to elucidate how colonial courts administered justice in homicides spurred by this type of domestic dispute. Cases of marital abandonment upheld murder convictions providing colonial conceptions justice for women victims, but not without the intense scrutinization of their morality. Finally, the conclusion provides a summary of femicide motivated by witchcraft, bridewealth, and marital abandonment. It summarizes how the outcomes of justice for these three different motives characterize the logics of gendered justice in trials of femicide within colonial Kenyan courts.

Chapter 1: Methodological Approaches to 20th-Century Kenyan Courts

As one walks through the security turnstile into the museum in the Kenya National Archives, it is almost impossible to ignore two large canvases presenting images of both President Moi and President Kibaki alongside various Western leaders, including Great Britain and the United States. Their visual curation feels distinctly uncanny given ordinary Kenyans experiences of electoral violence resulting from democratic repression over the last few decades.²⁰ In a sense, the museum at the entrance of the Kenya National Archives functions as a visual metaphor for the “sociology of power.”²¹ David Cohen and A.S. Odhiambo describe this concept as the hierarchies of identity—gender, class, ethnicity, and race—that are grounded in colonial imposition and reinforced through postcolonial institutions, determining what forms of knowledge are deemed legitimate by the state. This framework illuminates how power facilitates the intentional silencing of experiences that contradict the imaginaries of the political and economic elite.

The chapter begins with a presentation of the three main legal systems in colonial Kenya to contextualize the argument for legal hybridity within the colonial court’s adjudication over homicide. Colonial Kenya had a “multi-centric legal system,” in which proponents of Indigenous, Islamic, and British common law struggled to assert authority.²² Kairedin Tezera defines “legal hybridity” as the transference of “local norms and legal practices” between legal systems while

²⁰ Robert W. Blunt, *For Money and Elders: Ritual, Sovereignty, and the Sacred in Kenya* (Chicago: University of Chicago Press, 2020); Koigi wa Wamwere, *Negative Ethnicity: From Bias to Genocide* (New York: Seven Stories Press, 2003); Paul Ocobock, *An Uncertain Age: The Politics of Manhood in Kenya* (Athens: Ohio University Press, 2017); Lyn Ossome, *Gender, Ethnicity, and Violence in Kenya’s Transitions to Democracy: States of Violence* (Lanham, MD: Lexington Books, 2019).

²¹ David William Cohen and E. S. Atieno Odhiambo, *Burying SM: The Politics of Knowledge and the Sociology of Power in Africa* (Portsmouth, NH: Heinemann, 1992), 95–96.

²² Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts, “Introduction: Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges,” in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, ed. Shamil Jeppie, Ebrahim Moosa, and Richard L. Roberts (Amsterdam: Amsterdam University Press, 2010), 31.

each remained formally autonomous.²³ Therefore, this chapter interrogates how the adjudication of murder trials in colonial courts was shaped by the entanglement of legal systems through Native Assessors and court actors—the defendant, deceased, and witnesses. The second section in this chapter discusses how hierarchies of power infiltrated the preservation of archival sources, and how gender-centric methods allow for a reading of colonial legal records that sheds light on how gender was negotiated in the adjudication over the homicide of women in colonial courts. The third, and final, section concludes with a discussion of the curation of this study’s main legal corpus—the femicide archive. This source base was created through the careful excavation of murder trials based on the identity of victims, that being women. By centering legal hybridity as an analytical lens, this chapter illuminates how the entanglement of Islamic, Indigenous, and British common law courts produced unique patterns in the outcomes of gendered justice.

Legal Hybridity in Colonial Kenya’s Multi-Centric Legal System

David Otieno Ngira argues that Western legal scholars often neglect to analyze “informal” legal systems in Africa. He contends such systems are dismissed due to their lack of state regulation and their reliance on culture and repetition rather than Western notions of codified guilt and universal legal morality.²⁴ To appreciate African legal systems, Ngira insists that scholars must drop restrictive Western definitions of law that limit the recognition of African jurisprudence.²⁵ Although forms of dispute resolution varied widely across precolonial Africa, they were generally

²³ Kairedin Tezera, “Legal Pluralism and Emerging Legal Hybridity: Interactions between the Customary, State and Religious Law among the Siltie of Southern Ethiopia,” in *Legal Pluralism in Ethiopia*, ed. Susanne Epple and Getachew Assefa (Bielefeld: Transcript Verlag, 2020), 277, <https://doi.org/10.14361/9783839450215-013>. Ethiopia is often treated as an “exception” within African legal historiography due to its lack of extended colonial rule, yet Tezera still identifies the hybridization of customary, religious, and state legal systems.

²⁴ David Otieno Ngira, “Re-Examining Burial Disputes in Kenyan Courts through the Lenses of Legal Pluralism,” *Oñati Socio-Legal Series* 8, no. 7 (2018): 1020, 1025, <https://doi.org/10.35295/osls.iisl/0000-0000-0000-0982>.

²⁵ *Ibid.*, 1026.

administered by councils of elders whose expertise in Indigenous law was applied to attain social harmony rather than punitive judgement.²⁶ One such example practiced among the Kamba people of Kenya was the *king'ole*. Katherine Luongo and Richard Waller describe the *king'ole* as “an institution of justice directed against social malefactors” in which an enclave of elders relied on expert testimony to determine guilt.²⁷ The *king'ole* adjudicated instances of “serious malfeasance” and held the authority to “mete out capital punishment.”²⁸ Indigenous law utilized public forms of dispute resolution to instill a sense of communal responsibility and accountability. These methods of dispute resolution were quite different from the systematized, retributive justice later imposed by colonial common law.

Other forms of Indigenous dispute resolution were rooted in spirituality and cosmology. Marcia Wright’s study of Abercorn in Northern Rhodesia (Tanganyika/Zambia) around 1900 demonstrates how witchcraft functioned as a mechanism for determining guilt across a wide range of disputes. She recounts an incident from 1900 in which a man was accused of beating his wife to death, prompting the deceased woman’s mother to administer *mwavi*; a poison derived from the bark of an ordeal tree that was used to determine guilt through survival or death.²⁹ While this practice had been overseen by a chief, under German rule in Tanganyika, chiefs avoided implication.³⁰ In this case, the chief summoned the parties involved and declared their actions illegal, and punished them as accessories to a crime.³¹ This incident illustrates how colonial

²⁶ Brett L. Shadle, “*Girl Cases*”: *Marriage and Colonialism in Gusiiland, Kenya, 1890–1970* (Portsmouth, NH: Heinemann, 2006), 29.

²⁷ Katherine Luongo, *Witchcraft and Colonial Rule in Kenya, 1900–1955* (Cambridge: Cambridge University Press, 2011), 3; Richard D. Waller, “Witchcraft and Colonial Law in Kenya,” *Past & Present*, no. 180 (2003), 257.

²⁸ Luongo, *Witchcraft and Colonial Rule in Kenya*, 37.

²⁹ Marcia Wright, “Justice, Women, and the Social Order in Abercorn, Northeastern Rhodesia, 1897–1903,” in *Law in Colonial Africa*, ed. Kristin Mann and Richard L. Roberts (Portsmouth, NH: Heinemann Educational Books, 1991), 40.

³⁰ *Ibid.*, 41.

³¹ *Ibid.*, 40.

authorities criminalized Indigenous spiritual systems of justice not because they were ineffective, but because they threatened colonial judicial authority. The German condemnation of *mwavi* closely mirrors the British suppression of witchcraft in Kenya. In both contexts, colonial administrators attempted to regulate social order by dismantling Indigenous spiritual mechanisms for determining guilt, often repositioning African chiefs as instruments of colonial governance. Wright's case further reveals how legal hybridity facilitated selective criminalization, whereby Indigenous spiritual jurisprudence was recast as "uncivilized" and "amoral." This tension between Indigenous legality and imperial courts sets the stage for examining the second legal system operating in Kenya during the colonial period: Islamic *Kadhi* courts (commonly transliterated as *Qadi*).

Islamic institutions had existed in East Africa for centuries, but colonial *Kadhi* courts were established on the Kenyan coast by Sayyid Said bin Sultan of Muscat in 1832 after he assumed political control of the islands of Zanzibar and Pemba. He consolidated judicial power through the establishment of Kadhi courts grounded in Sunni and Ibadi legal traditions, which later extended along the Swahili coast from Mombasa to Lamu.³² In the late nineteenth century, as Britain sought to secure its Indian Ocean trade routes, it persuaded the Sultanate of Zanzibar to accept British protection against the encroaching German expansion in Tanganyika.³³ Zanzibar became a British Protectorate in 1890.³⁴ Under indirect rule, *Kadhi* courts continued to serve subjects of the Sultanate, while British-established courts adjudicated cases involving colonial subjects.³⁵ *Kadhi*

³² Kevin Wanyonyi, "*The Kadhis' Courts in Kenya: Towards Enhancing Access to Justice for Muslim Women*" (PhD diss., Lund University, 2016), 13.

³³ Ibid.

³⁴ Elke E. Stockreiter, "Child Marriage and Domestic Violence: Islamic and Colonial Discourses on Gender Relations and Female Status in Zanzibar, 1900–1950s," in *Domestic Violence and the Law in Colonial and Postcolonial Africa*, ed. Emily Burrill, Richard L. Roberts, and Elizabeth Thornberry (Athens, OH: Ohio University Press, 2010), 139.

³⁵ Ibid.

courts operated as inquisitorial bodies that sought to mediate disputes through encouraging reconciliation between disputants, while British courts functioned to declare a winner amongst dueling litigants.³⁶ In 1908, the British formally removed all criminal jurisdiction from the Zanzibari *Kadhi* courts, transferring power over violent crimes exclusively to British courts.³⁷

A similar reconfiguration of *Kadhi* courts unfolded along the Kenyan coast. Following Kenya's transition from a British protectorate to a colony in 1920, British administrators asserted jurisdiction over all criminal offences such as felony rape, theft, and murder previously handled by *Kadhi* courts in Mombasa, Malindi, and Lamu.³⁸ To further consolidate control, colonial officials founded the Muslim Academy in Nairobi to train *Kadhis* under a British-designed curriculum, thereby attempting to influence Islamic judicial reasoning from within.³⁹ Elke E. Stockreiter notes that British colonialists had overwhelmingly misconstrued assumptions about Islamic Law through Orientalist assumptions. They viewed Islamic Law to be inherently discriminatory towards women, because they believed practices like “purdah and veiling” reinforced overt male dominance.⁴⁰ Yet studies from Susan F. Hirsch and Kevin Wanyonyi demonstrate that, in practice, Kadhi courts frequently became sites where Kenyan Muslim women exercised agency in pursuing legal assistance in obtaining divorces to escape violent domestic situations.⁴¹

Ultimately, the British never abolished the presence of Kadhi courts in Kenya, but they did systematically strip them of criminal jurisdiction over violent offenses such as homicide. As a result, legal documentation concerning the homicide of women adjudicated under Islamic law in

³⁶ Wanyonyi, “*The Kadhis' Courts in Kenya*,” 59–60.

³⁷ Stockreiter, “Child Marriage and Domestic Violence,” 139.

³⁸ Wanyonyi, “*The Kadhis' Courts in Kenya*,” 15.

³⁹ Ibid.

⁴⁰ Stockreiter, “Child Marriage and Domestic Violence,” 140.

⁴¹ Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998), 15, 244; Kevin Wanyonyi, “*The Kadhis' Courts in Kenya*,” 25.

colonial Kenya is largely absent from the archive. However, a comparative case study from the British colony of Nigeria, offers insight into how Islamic legal reasoning addressed domestic murder. Alan Christelow's study of early twentieth-century Kano (Nigeria) recounts the murder of a prominent woman whose mother and two male relatives testified to her husband's abuse. No witnesses had directly observed the fatal beating and the husband claimed his wife had been afflicted by *jinn* (evil spirits in Arabic), so the court declared that his "path was clear" and released him of guilt.⁴² Christelow argues that the acquittal resulted not from gender bias but evidentiary standards within Islamic law that privileged spiritual explanations over circumstantial testimony.⁴³ His findings illuminate how homicide convictions could be mitigated through strategic manipulations of ideology and spirituality. This dynamic resonates with several cases in this study's overall legal corpus in which Muslim litigants appeared before British common law courts and employed similar manipulations of colonial epistemologies to evade accountability for homicide.

The final legal system, falling under the closest scrutiny in this study, was British common law imposed on Kenyans through imperial rule. At the Berlin Conference in the mid-1880s, European countries laid claim to territories throughout the African continent facilitating the "Scramble for Africa." British expansion into East Africa was complicated by German competition, culminating in the Anglo-German Agreement of 1890. This established the East African Protectorate which divided present-day Kenya and Tanganyika (Tanzania) between Britain and Germany. Mann and Roberts note that protectorates often were formalized through

⁴² Allan Christelow, "Theft, Homicide, and Oath in Early Twentieth Century Kano," in *Law in Colonial Africa*, ed. Kristin Mann and Richard L. Roberts (Portsmouth, NH: Heinemann Educational Books, 1991), 218.

⁴³ Ibid.

ostensibly peaceful yet coercive tactics to extract treaties from local rulers.⁴⁴ Although, the protectorate framework nominally required respect for local institutions and practices, Kenya's thirty years as a protectorate witnessed escalating British administrative and legal intervention. Colonial officials persistently characterized African institutions as "barbaric" and aspired to realign them with European ideals of civility and order.⁴⁵ This attitude essentially laid the foundation for British colonial legal expansion.

Understanding how common law took shape as a legal hybrid form in Kenya requires recognition of the profound imprint of the Indian colonial legal experience on its development. As one of Britain's oldest and administratively developed colonies, India routinely served as a legal template for subsequent imperial expansion. Sandra F. Joireman's study compares Indian and Kenyan experiences of British common law under colonialism. In 1727, British courts were established in colonial India and gradually adapted to local cultural contexts, producing localized yet still imperial legal institutions.⁴⁶ This Indo-British, hybrid legal form was later exported to East Africa, as common law courts introduced in Zanzibar in 1884 and the Kenyan protectorate in 1897, became placed under the appellate jurisdiction of the High Court of Bombay.⁴⁷ Grasping this Indo-British colonial genealogy reveals how even the "British" legal system in Kenya was itself a product of intercolonial circulation and adaptation. Even the administrative structures of colonial Africa were shaped by this Indo-British legal entanglement, as embodied by Lord Frederick Lugard. Educated in India, he wrote the *Dual Mandate* in 1922, which became a pivotal document

⁴⁴ Kristin Mann and Richard L. Roberts, "Introduction," in *Law in Colonial Africa*, ed. Kristin Mann and Richard L. Roberts (Portsmouth, NH: Heinemann Educational Books, 1991), 16.

⁴⁵ *Ibid.*, 18.

⁴⁶ Sandra Fullerton Joireman, "The Evolution of the Common Law: Legal Development in Kenya and India," *Commonwealth & Comparative Politics* 44, no. 2 (2006): 10, <https://doi.org/10.1080/14662040600831636>.

⁴⁷ *Ibid.*, 8, 13.

used to justify British colonial expansion in Africa and mandated the “enforcement of indigenous customary law.”⁴⁸

While colonial courts in Kenya operated under the British-derived legal doctrine, their personnel and procedural norms were profoundly shaped by Indian institutions and intermediaries. Many legal and medical professionals in colonial Kenya were of European or Asian descent, trained in Britain or India. Several cases examined in this study identify trial actors simply as “Asian,” underscoring the influence of Indian intermediaries. Tracing this history accounts for the racialized hierarchies of expertise that structured colonial legal authority and excluded Black Kenyans from higher-level positions of judicial power. However, Indian universities and professional training programs continued to exert influence into the postcolonial period and became a central site for producing the emergent class of Black Kenyan legal professionals.⁴⁹

After contextualizing these external influences on Kenya’s common law system, there is one final layer to address. British colonial powers made it their mission to establish the legitimacy of colonial courts to Kenyan people through the incorporation of “Native” laws and customs. Historians remind us that colonial courts were never designed to protect African constituents but functioned as institutional mechanisms for controlling Indigenous social, cultural, and religious life. Therefore, that “native legitimacy” sought out by colonial administrators was not grounded in genuine African jurisprudence. Rather, they believed that the strategic incorporation of “native law” would make colonial courts more effective instruments of Indigenous regulation. In other words, incorporating African institutions should encourage Africans to utilize colonial courts, which in turn would allow colonial authorities to project paternalistic ideals of European

⁴⁸ Jonas Eze et al., “Reassessing Tradition: The Repugnancy Doctrine and the Colonial Shaping of Customary Law in Nigeria,” *IIUM Law Journal* 33, no. 2 (2025), 571–572.

⁴⁹ Cohen and Odhiambo, *Burying SM*, 80.

neotradition—what Terence Ranger depicts as new European constructions of civility, morality, and discipline for the purpose of social constraint—onto African colonial subjects while expanding surveillance over them.⁵⁰

This selective incorporation of Indigenous law is sharply problematized by Martin Chanock in his analysis of the “making of customary law” in Northern Rhodesia. His research reveals that the formalization of “new customary law” enabled elite European and African men the opportunity to manipulate “tradition,” thereby enshrining patriarchal ideologies into the fabric of customary justice.⁵¹ He argues that by applying a Marxist lens, scholars can better identify how the interaction between “Western legal modes” and “the political economy of colonial capitalism” produced a customary system in which “male domination” appeared natural and traditional.⁵² The inclusion of social-historical context makes it clear why law became so central to colonial projects of gendered subjugation: legal codification allowed men, both African and European, to define, justify, and enforce patriarchal norms under the guise of cultural authenticity.

In this sense, criminal cases tried in the colonial courtroom became a unique space for the operation of legal hybridity. Indigenous and Islamic legal ideologies entered colonial courts through both Native assessors and the court actors themselves—the defendant, the deceased, and witnesses. The role of the “Native Assessor” was to act as experts on Indigenous law which helped to solve the problem of needing “proof” within British common law.⁵³ Native assessors were

⁵⁰ Terence Ranger, “The Invention of Tradition in Colonial Africa,” in *The Invention of Tradition*, ed. Eric Hobsbawm and Terence Ranger (Cambridge: Cambridge University Press, 2012), 218–219, 221.

⁵¹ Martin Chanock, “Making Customary Law: Men, Women, and Courts in Colonial Northern Rhodesia,” in *African Women & the Law: Historical Perspectives*, ed. Margaret Jean Hay and Marcia Wright (Boston: African Studies Center, Boston University, 1982), 56.

⁵² Ibid.

⁵³ Bonny Ibhawoh, “Historical Globalization and Colonial Legal Culture: African Assessors, Customary Law, and Criminal Justice in British Africa,” *Journal of Global History* 4, no. 3 (2009): 432, <https://doi.org/10.1017/S1740022809990155>. He notes the role of an “judicial assessor” began in British courts to incorporate nautical expertise and was later adapted to incorporate “Native” ideologies when British courts were established in colonial India.

appointed by colonial administrators based on their race or ethnicity to provide indigenous knowledge to prevent an “alien court” from committing injustice due to an “ignorance of local traditions.”⁵⁴ Their role within the colonial court was to serve as a formal entity through which Indigenous law was interpreted into a colonial legible form. Additionally, Indigenous and Islamic law entered the court more discretely through the identity of court actors involved in a legal dispute. This study’s Kenyan court actors practiced Islam, Christianity, or Indigenous spirituality (recorded in legal records as “pagan”). Based on those identities, this study can infer some of the legal and sociocultural contexts that led to these fatal disputes, as well as the consequences of the colonial courts’ intervention in interpersonal disputes among people familiar with other forms of legal resolution. Ultimately, Native assessors and court actors helped to introduce Indigenous and Islamic law into the British colonial legal system. This study will demonstrate in the following chapters that this occasionally led to their incorporation within colonial legible terminology.

This section provides background on Kenya’s three main legal systems to demonstrate how British efforts to consolidate legal hegemony over criminal cases led colonial courts to operate under a framework of legal hybridity. Through colonial courts’ adjudication of violent criminal acts, this study utilizes murder trials as a site to analyze the entanglement of Islamic and Indigenous jurisprudence within British common law. Colonial control over the legal landscape helped the administration to construct hegemonic gender relations that often-reinforced patriarchal authority, but they did not produce a uniformly oppressive legal landscape. The presence of multiple legal systems created openings through which African women could exercise agency by strategically navigating between legal forums to contest violence and escape unwanted marriages. The presence of legal hybrid systems thus functioned as a contradictory terrain that simultaneously enabled

⁵⁴ Ibid., 432–433.

women's legal maneuvering and naturalized forms of gendered power that rendered violence against women juridically intelligible and, in some cases, excusable.

The Colonial Library & Its Discontents: Gendered Methods for Legal Sources

Archives are often portrayed as neutral collections of documents where one can access the “objective” history of an event, person, or place, but they often embody the same limitations of power described by Cohen and Odhiambo’s “sociology of power.”⁵⁵ Michel Foucault’s concept of the *historical à priori* argues that cultural institutions are inscribed with a set of rules that govern the boundaries of thought within a given epistemic framework.⁵⁶ The retention of historical materials within the archive is thus constrained by what is deemed acceptable at a given moment in time. Pierre Bourdieu argues that these materials placement within formal institutions imbues them with *cultural capital* which positions them as containing knowledge worthy of prestige.⁵⁷ By placing these objects on a literal and figurative pedestal, archival logic replaces popularity with an institutional authority intended to delegitimize the lived experiences of ordinary people. Therefore, as Jacques Derrida would agree, the motivation for the preservation of materials in the archive is intimately linked to the state’s intended use for them in the future: the reconstruction of history.⁵⁸

This marginalization of ordinary experiences constitutes a central concern of Michel-Rolph Trouillot’s critique of “silencing” in historical production. Trouillot argues that “uneven power” during archival curation produces histories of approximate truths which leave countless stories

⁵⁵ Cohen and Odhiambo, *Burying SM*, 95–96.

⁵⁶ Michel Foucault, “The Historical A Priori and the Archive,” in *The Archaeology of Knowledge*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 127.

⁵⁷ Pierre Bourdieu, “Pierre Bourdieu (1930–2002),” in *The Norton Anthology of Theory and Criticism*, ed. Vincent B. Leitch (New York: W. W. Norton, 2018), 1584.

⁵⁸ Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: University of Chicago Press, 1998), 4, 17–18, 68.

uncovered or obscured.⁵⁹ These “forgotten” stories, or silences, are intimately tied to colonial archival institutions, as they often functioned merely as, what V.Y. Mudimbe has called, “colonial libraries.”⁶⁰ Their curation and contents reflect asymmetrical power relations stemming from the rudimentary logics of colonial imaginaries that weaponized race, ethnicity, and gender in service of imperial expansion. To adapt the African proverb popularized by Chinua Achebe—“Until Lions have Their Own Historians, the Story of the Hunt Will Always Glorify the Hunter”—the Kenya National Archives remains an institution where stories of the colonized, the “lions,” were primarily formulated and curated by white, male, British colonial officers, the “hunters.”⁶¹ The archival record, therefore, must be read as a colonial repository of knowledge reflecting the interests of its curators, deeply shaped by intersecting hierarchies of race, gender, and imperial power, that continue to inform how legitimacy and authority are prescribed today.

This reflection on how institutional power permeates archival logic is inextricably linked to this study’s corpus of colonial murder trials. In a historiographical review of African legal scholarship, Richard Waller highlights the importance of recognizing that many colonial court records remain in archives because of their perceived “exceptionalism.”⁶² This *exceptionalism* was rooted in the motivations of colonial officers. Cases were excluded or lost if they were perceived as void of precedent for future trials but preserved if they appeared unique or instructive. Therefore, the court records available in the Kenya National Archives today were curated according to their perceived utility for British colonial law courts. This reveals how the

⁵⁹ Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995), 27.

⁶⁰ See V.Y. Mudimbe’s discussion of the “colonial library” in *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (Bloomington: Indiana University Press, 1988), 175–176.

⁶¹ Achebe, *Female Monarchs and Merchant Queens in Africa*, 11.

⁶² Richard Waller, “Legal History and Historiography in Colonial Sub-Saharan Africa,” *Oxford Research Encyclopedia of African History* (Oxford: Oxford University Press, 2018), 14, <https://doi.org/10.1093/acrefore/9780190277734.013.548>.

preservation of court cases, like archival materials more generally, were limited by what the colonial government deemed worthy of representation.

The inherent obfuscation of marginalized peoples' voices within this study's legal corpus raises a critical methodological question: how can historians write the histories of deliberately marginalized individuals without reproducing the very same silences that once erased them? One approach in reading the archive lies in decolonial and feminist archival methodologies. Reflecting on her work in the Soviet Archives, Cristine Vatulescu draws on feminist archival theory to emphasize the "ethics of care" required to recognize and respond to how the logic of the archive produced silences through systematic marginalization.⁶³ Nwando Achebe extends this decolonial feminist intervention through her call to "Africaniz[e] and feminiz[e]" the production of African women's history.⁶⁴ Achebe argues that stories of African women's lives have long been distorted through imperial objectification and the incorporation of African-derived sources in historical reconstruction can help "restore the[ir] voice[s] and dignity."⁶⁵ This methodological orientation demands that scholars engage archival narratives with both careful interpretation and ethical responsibility to the subjects involved.

It is imperative to recognize that the transcripts of murder trials cannot be treated as comprehensive accounts of either the trial itself or crime at large. Their reduction to a mere moment in time, production in the written form, and preservation in colonial languages reveals their limitations as portrayals of lived realities. Obfuscations in colonial legal records arise primarily from struggles over representation and translation. Representation is obscured at two levels: first, the clerk summarizes the testimony in an incomplete manner that can unintentionally

⁶³ Christina Vatulescu, interview by Jen Hoyer, "Reading the Archival Revolution," *New Books Network*, December 8, 2024, audio, 13:20–14:00, <https://newbooksnetwork.com/reading-the-archival-revolution>.

⁶⁴ Achebe, *Female Monarchs and Merchant Queens in Africa*, 12.

⁶⁵ *Ibid.*

lead to the silencing of court actors; and second, the historian acts as a “representative” with prior knowledge leading to bias in their portrayal of the trial.⁶⁶ The former is particularly susceptible to errors of translation, as indicated by the documented use of translators within this study’s corpus.⁶⁷ In these instances, the District Commissioner, police officer, or colonial-appointed African responsible for translation presented their linguistic qualifications to the court.⁶⁸ Even with their qualifications, errors were inevitable due to the pliability of language and the interpretive nature of translation. Nonetheless, the narratives within these legal disputes provide multiple forms of written evidence that can be analyzed to illuminate the logics of gendered justice in colonial Kenya.

With careful methodological consideration, the value of colonial legal records in providing insight into the “ordinary” or “mundane” past cannot be understated. Several legal historians and anthropologists describe how courtrooms became a site where private disputes became subjected to public discourse and debate.⁶⁹ The resulting transcriptions function as, what Ghislaine Lydon has called, “dialogic” texts, because they contain insights into the concerns of the ordinary person as recorded by a scribe.⁷⁰ They document spaces of “intercultural mediation” that allow historians to map relations of gender and power that contribute to women’s experiences with violence.⁷¹ Furthermore, narratives within the trial transcripts endow the deceased woman with what Cohen

⁶⁶ Getz and Clarke, *Abina and the Important Men*, 141.

⁶⁷ See 1923, AC-1-226, KNA; 1949, AXM1-8-359, KNA; 1952, AXM1-8-433, KNA; 1955, AXM1-8-1295, KNA; 1964–1965, AC-1-5517, KNA; 1969–1970, DP-18-3(b), KNA; 1941, AXM1-8-1361, KNA, provides a unique instance where judicial correspondence indicated complications of finding an African translator that could speak both Kikuyu and Meru because these languages were not typically learnt by colonial administrators (to the same extent as Swahili).

⁶⁸ See 1949, AXM1-8-344, KNA.

⁶⁹ See Stacey Hynd, “Fatal Families: Narratives of Spousal Killing and Domestic Violence in Murder Trials in Kenya and Nyasaland, c. 1930–56,” in *Domestic Violence and the Law in Colonial and Postcolonial Africa*, ed. Emily Burrill, Richard L. Roberts, and Elizabeth Thornberry (Athens, OH: Ohio University Press, 2010), 159; Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998), 29.

⁷⁰ Ghislaine Lydon, “Writing Trans-Saharan History: Methods, Sources and Interpretations across the African Divide,” *The Journal of North African Studies* 10, nos. 3–4 (2005): 307, <https://doi.org/10.1080/13629380500336664>.

⁷¹ *Ibid.*, 314.

and Odhiambo describe as the “character of life.”⁷² This concept emphasizes how trials granted the deceased person a voice through their stories that persist in the interstices of witness testimony, evidentiary materials, and judicial reasoning. Although the victims themselves are deceased, their lives and the structural conditions surrounding their death can be partially reconstructed to illuminate the gendered contours of colonial justice. The following section outlines the collection of archival legal documents and their contents for the purpose of historical reconstruction.

Curating the Femicide Archive: Collection of Colonial Legal Records

When I entered the research room of the Kenya National Archives, I began the journey of excavating over two hundred murder cases spanning the last century. The archive’s online search system led me to a wide range of primary and secondary sources—including Kenyan penal codes, women’s rights reports, newspaper clippings, handwritten notes, and more. Most of the documents I encountered were written and preserved in English, but a few pages remained in either handwritten or typewritten Latin-script Swahili, accompanied by English translations. With the help of my research collaborators, Edwin Wasula and Alfred Saitabau, I located just over two hundred cases of felony convictions (including assault and homicide) from Kenya, all tried between the period of 1920 to 1970.⁷³ Their filing numbers indicated they were from three primary archival series: AC (Appeal Court of East Africa), AXM1 (Ministry of Legal Affairs), and DP (District Commissioner’s Office in Kisii).

From this point, I began sorting through the files to identify historical instances of femicide, effectively creating a new archival corpus. I utilized what Mann and Roberts call “proxy terms,”

⁷² Cohen and Odhiambo, *Burying SM*, 22.

⁷³ A small number of cases tried in Uganda and Tanzania appear in the archival record but fall outside the geographic scope of this study.

to search for “homicide” or “murder” of women rather than “femicide.”⁷⁴ Colonial legal documents typically classified homicide trials under the charge of “murder,” whether the sentence was upheld or commuted upon appeal. Many of these cases were titled “Rex” (representing King Edward VII, George V, and Edward VIII) from 1936 to 1952 or “Regina” (representing Queen Victoria and Elizabeth II) before 1936 and after 1952, representing the Kenyan state, versus the name of the accused.⁷⁵ The inclusion of the perpetrator’s name in the title of legal documentation raises ethical considerations about the use of names in the creation of contemporary historical scholarship. An argument for retaining names is that it may restore a measure of agency to women who were victims of homicide; a rationale that likely informs other historians’ decisions to include the names of individuals within their analyses.⁷⁶ However, for the purposes of this study, I have chosen to encode the identities of both perpetrators and the deceased. This decision reflects concern for the privacy of both the individuals involved, given that they are no longer alive to consent to the disclosure of their identities, and to protect the identity of their direct descendants who may still be alive today. Accordingly, archival indexing numbers serve as the primary means of referencing the cases analyzed in this study which are available in this study’s appendix.

Furthermore, the perpetrator’s gender was conveniently located in the case summary or through abbreviations such as “s/o” (son of), “w/o” (wife of), or “d/o” (daughter of). In contrast, identifying the names and genders of the victims proved far more challenging and often required searching for them within the trial transcript. Only then could the victim’s gender be located through terms such as “girl,” “woman,” “sister,” or “daughter,” or the same gendered abbreviations (“w/o” or “d/o”) within her name. The difficulty of locating information identifying deceased

⁷⁴ Mann and Roberts, “Introduction,” 1.

⁷⁵ Getz and Clarke, *Abina and the Important Men*, 137.

⁷⁶ See Hynd, “Fatal Families,” 168–173; Luongo, “Motive Rather than Means,” 44–53.

women reflects the gendered nature of representation within colonial judicial practice. Even when deceased women were central court actors, formally represented by the prosecution, the methods of legal documentation limited their visibility by omitting identifying information from trial summaries. Furthermore, a woman's gender was typically recorded through patrilineal kinship (relation to male family members, "d/o," or spouse, "w/o"), regardless of ethnic identity or matrilineality. Indeed, while the prevalence of patrilineal societies in Kenya increased as many Bantu-speaking Kenyans' economic dependency on livestock increased, some ethnic groups were notably matrilineal—particularly the Swahili and Digo, but also, historically, Kikuyu.⁷⁷ This raises the question of whether the standardization of naming women through male counterparts in colonial records reflects an extension of Indigenous patrilineal practices or an additional layer of colonial patriarchal imposition. Luongo notes that colonial administrators used local native courts (LNCs) and administrative legal roles to restructure the "generation and genealogy" of sociopolitical relations.⁷⁸ This enabled African men to consolidate forms of influence and authority previously unavailable to them. Although these attempts to institutionalize a gendered hierarchy of authority were contested, their persistence supports the argument that male-centered identification was reinforced by colonial courts.

Understanding the institutional structure within which these records were produced is equally important. Kenya's colonial legal system was organized across five levels of courts. Local Native Courts (LNCs) held the lowest rank and were operated by British-appointed Africans who oversaw civil cases considered "customary" in nature. Then the District and Resident Magistrate

⁷⁷ Eva Tène, "On the Historical Roots of Gender Norms: Evidence from Matrilineal Societies in Sub-Saharan Africa," *The World Bank Economic Review*, advance online publication, April 6, 2026, <https://doi.org/10.1093/wber/lhag002>. For Digo matrilineal inheritance, see Bettina Ng'weno, "Inheriting Disputes: The Digo Negotiation of Meaning and Power through Land," *African Economic History*, no. 25 (1997): 60. While scholarship on Kikuyu matrilineality remains limited, several Kikuyu individuals I interviewed informally described Kikuyu society as historically matrilineal.

⁷⁸ Luongo, *Witchcraft and Colonial Rule in Kenya*, 44.

courts were a step above, and each were divided into three levels that determined their jurisdiction and sentencing capacity. Third-Class Magistrate courts, in particular, frequently presided over initial homicide trials to determine if they should proceed to trial at the Supreme Court. Then there was the Supreme Court which oversaw serious criminal cases, and at times operated as an assize court that traveled to major cities for adjudication. Finally, the East African Court of Appeal, established in 1902 and relocated to Nairobi in 1905, held “final appellate jurisdiction” over appeals of “both criminal and civil cases.”⁷⁹ All cases analyzed in this study were tried and appealed at some point within this hierarchy. Their appeals, within the Supreme Court of Kenya (in Kisii, Mombasa, Eldoret, Nairobi, or elsewhere) or the East African Court of Appeal, highlighted points of judicial contention and informed colonial legal adaptation. The cases examined here were appealed following convictions the accused found unsatisfactory, primarily that of murder with its mandated death sentence. It is plausible that omitted cases involved defendants found “not guilty” or acquitted, since the archived materials document those appealing convictions of murder or manslaughter.⁸⁰ Recognizing this selective bias within preservation is essential to understanding how these materials reflect broader patterns of justice and its denial within colonial Kenya’s common law system.

With this acknowledgement, I narrowed down the corpus to forty-nine cases involving the homicide of women. The content of each file varied significantly but contained at least a trial transcript or official judgment indicating whether the appeal was commuted, acquitted, or dismissed. Other documents included medical reports of perpetrators, mental health assessments

⁷⁹ Obi N. I. Ebbe, *World Factbook of Criminal Justice Systems: Kenya* (Albany, NY: State University of New York at Albany, Bureau of Justice Statistics, 1993), 10–12, <https://bjs.ojp.gov/content/pub/pdf/wfbcjsk.pdf>.

⁸⁰ 1925, AC-1-257, Kenya National Archives (KNA). The only exception is this case from 1925, where the accused appealed a charge of “voluntarily causing grievous hurt” after beating his wife unconscious then leaving her in “the bush.” They never recovered her body, leaving a lack of evidence for a harsher conviction.

(particularly in cases invoking a verdict of insanity), interviews with local communities concerning “customary” beliefs, statements from the accused and victims, confidential reports, gubernatorial correspondence, and assorted evidentiary materials such as letters from litigants, postmortem reports, and crime scene sketches. These materials offer legal evidence while also constituting a fragmented yet revealing narrative of how gender, power, and justice intersected in colonial Kenya.

Of the forty-nine cases of the homicide of women, two from 1949 and 1951 involved women perpetrators. Although limited documentation constrains further analysis of these two cases, their stories warrant brief consideration. One case from 1949 involved a woman who killed two of her children claiming her act was “motiveless,” while the other case from 1951 was committed by an elderly woman who killed her co-wife to get revenge on their husband.⁸¹ The former was sent to a mental institution while that latter was granted clemency for the death sentence on account of her old age. The remaining forty-seven cases involved male perpetrators charged with the killing of at least one woman. Of these cases, the majority ended with convictions of murder, followed by acquittals, commutations to manslaughter, insanity rulings, and a conviction of grievous hurt. The majority involved individuals who knew one another either through marriage, cohabitation, or shared community ties, suggesting that interpersonal familiarity underpinned lethal violence. Some cases diverged from this pattern, particularly after 1952, when the colonial government declared a state of emergency in response to the threat of Mau Mau freedom fighters on the livelihood and lives of white settlers.⁸² The Supreme Court established a Court of Emergency Assize to expedite trial proceedings, disproportionately targeting Kikuyu defendants. One case from 1954 listed this court as the location for the appeal hearing of a Kikuyu

⁸¹ 1949, AXM1-8-351, KNA.; 1951, AXM1-8-347, KNA.

⁸² Paul Ocobock, *An Uncertain Age: The Politics of Manhood in Kenya* (Athens: Ohio University Press, 2017), 112.

man who was ultimately convicted of murder.⁸³ Another case from 1953 involved a Kikuyu man convicted for participating in a “gang” that raided and burned a neighboring *boma* (homestead in Swahili), resulting in multiple injuries and deaths—an event labeled the “Lari Massacre”⁸⁴ It is likely that Kikuyu defendants during this period were unjustly subjected to harsher sentencings as part of broader colonial efforts to maintain “law and order” and to quell white settlers’ anxieties. Despite these limitations, the surviving case files offer valuable insight into the historical logics of gendered justice that governed how perpetrators negotiated sentencing and how deceased women influenced outcomes of justice without ever physically appearing in the courtroom.

⁸³ 1954, AXM1-8-1000, KNA.

⁸⁴ 1953, AXM1-8-482, KNA.

Chapter 2: Witchcraft: “You are always accusing me of practicing witchcraft”

On October 2, 1940, Morani was put on trial for the alleged murder of Nyambura, an older woman whom he believed had used witchcraft against his family. After repeated visits from Nyambura, two of his children fell ill and died, and the third child died on Monday, July 29. In his deposition to the Second-Class Magistrate on September 13, Morani attributed his children's deaths to her alleged use of witchcraft.⁸⁵ At the Supreme Court trial held from October 2 to 3, Nyambura's daughter recounted her mother's attack. She originally stated it was on the evening of Saturday, August 3, but following cross-examination said it occurred on Sunday, August 4. She stated that Morani encountered Nyambura on a farm (*shamba* in Swahili) and attacked her with various instruments until she lay dead.⁸⁶ Morani said the killing occurred the night of Saturday, August 3, and claimed that he was enraged by the deaths of his children and feared that the same fate would befall him.⁸⁷ His testimony presented a motive for homicide, but the court was left to decide whether this killing constituted murder or manslaughter.

This chapter examines Morani's 1940 case and Makau's 1942 case, two murder trials motivated by witchcraft accusations. In both instances, younger men stood trial for killing older women whom they accused of practicing witchcraft. The chapter considers how the accused men invoked colonial courts' limited understanding of witchcraft practices in Kenya in attempts to mitigate their murder convictions. In doing so, it demonstrates how debates over witchcraft brought Indigenous law into colonial murder trials and contributed to leniency toward male perpetrators.

⁸⁵ Second-Class Magistrate Trial, Kisumu, deposition statement (from the accused to the Second-Class Magistrate), September 13, 1940, AXM1-8-65, KNA, Nairobi, 1.

⁸⁶ Supreme Court Trial, Kisumu, transcript, October 2–3, 1940, AXM1-8-65, KNA, Nairobi, 3–4.

⁸⁷ *Ibid.*, 6–10.

Colonial Witchcraft Legislation

During the implementation of British common law in Kenya, colonial administrators faced significant challenges in codifying legislation on witchcraft due to its cultural ambiguity. The colonial government attempted to enact anti-witchcraft legislation through the Kenya Witchcraft Ordinance—issued in 1909, amended in 1918, and reissued in 1925.⁸⁸ Revisions to the Ordinance targeted witchcraft practices deemed disruptive to social order and sought to streamline their prosecution as criminal offences.⁸⁹ However, this effort to create universalizable legislation was hindered by cultural variations in the definition of witchcraft. As a result, the 1925 version was revised to include local chiefs and new definitions of criminality. Luongo explains how the language was broadened to mandate chiefs as accountable for reporting witchcraft through formal colonial channels and removed previous distinctions between “good” and “bad” forms of witchcraft.⁹⁰ These revisions were justified by colonial aspirations to assert hegemonic control over a phenomenon that appeared to actively resist codification.

Witchcraft operated as a legitimate force and legal category within many African communities. However, fundamentalist British lawyers argued that its lack of physical manifestation rendered it “impossible” to prove in court. Waller notes that determining the presence of witchcraft relied upon “a system of causal logic and social practice,” fundamentally opposed to the evidentiary standards of common law.⁹¹ In a report from 1935, the colonial administrator G. St. J. Orde Browne expressed concern that the law would lose legitimacy if those whom it was meant to govern viewed it with “fear and distrust.”⁹² This tension compelled colonial

⁸⁸ Waller, “Witchcraft and Colonial Law in Kenya,” 245.

⁸⁹ Luongo, “Motive Rather than Means,” 54; *Ibid.*, 245–246.

⁹⁰ *Ibid.*, 41; *Ibid.*, 263.

⁹¹ *Ibid.*, 250–251.

⁹² G. St. J. Orde Browne, “Witchcraft and British Colonial Law,” *Africa* 8, no. 4 (1935): 485, <https://doi.org/10.2307/3180595>.

courts to send administrators to conduct “on-the ground” interviews to increase their knowledge of witchcraft for the purposes of “culturally reasonable conjecture.”⁹³ As Luongo explains, their goal was to render “subject peoples more easily governable” by translating unfamiliar cultural practices into colonial legal categories.⁹⁴ Within this logic, witchcraft accusations posed a threat to colonial hegemonic legal control over Africans, because they could be mobilized to justify acts of violence and evade accountability. Colonial courts were then confronted with the insurmountable challenge of incorporating local understandings of witchcraft in ways that sustained colonial imaginations of power and control.

Colonial efforts to establish a universal legal definition of witchcraft faced much resistance from Africans. In many Kenyan societies, identifying the presence of witchcraft did not rely solely on “rumor, reputation and the accusation of angry relatives,” but was generally governed by councils of elders recognized as specialists.⁹⁵ A witch-killing could become “socially acceptable” when sanctioned by such councils, and was performed with communal participation for the purpose of restoring social harmony.⁹⁶ If killings occurred outside these procedures, they were considered a violation of Indigenous jurisprudence. In cases of murder motivated by accusations of witchcraft, the colonial court relied primarily on “Native assessors,” or African informants, to identify witchcraft. Waller argues that this conditional authority threatened colonial legal legitimacy, because Africans “determined who were witches” and the state just “confirmed—or rejected—their opinion.”⁹⁷ This led colonial judges to redefine witchcraft as an auxiliary feature of an already established criminal offense: murder. The question on trial was no longer about

⁹³ Luongo, “Motive Rather than Means,” 38.

⁹⁴ *Ibid.*, 36.

⁹⁵ Waller, “Witchcraft and Colonial Law in Kenya,” 257.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, 260.

identifying witchcraft, but whether the killing warranted a murder conviction. As a result, the persecution of witch-killers increased, leading many Africans to believe colonial courts were more interested in “protecting witches rather than the community.”⁹⁸ However, colonial attempts to reassert some semblance of authority over witchcraft, only further eroded the legitimacy of the colonial legal system.

Luongo argues that witchcraft entered murder trials as a “motive rather than means.”⁹⁹ Prior to the 1930s, the use of witchcraft as a defense in murder trials led colonial judges to wrestle with how “customary law” should recognize witchcraft. By the 1930s, however, debates shifted from “custom to commutation” as judicial authorities began incorporating witchcraft into existing categories of criminal defense.¹⁰⁰ This can be read as an attempt by the court to avoid fruitless debates over unresolvable definitions by subsuming witchcraft into established legal doctrines. As the cases I examine here occurred in the 1940s, Luongo’s insight provides critical context for understanding how witchcraft functioned as a legitimate line of defense capable of reducing convictions of murder to manslaughter.

The most common defense in witchcraft-related murder trials during the 1940s, concerned whether the homicide fell within the statutory definitions of “grave and sudden provocation” or “malice aforethought.”¹⁰¹ The 1930 Penal Code defines “provocation” as any wrongful act that deprived one’s exertion of self-control, thereby reducing to a conviction of manslaughter.¹⁰² By contrast, “malice aforethought” referred to the intention or knowledge that one’s action may cause injury or death to another.¹⁰³ These statutory categories became inextricable from legal disputes

⁹⁸ Ibid., 244.

⁹⁹ A similar conclusion is drawn by Luongo in “Motive Rather than Means,” 36.

¹⁰⁰ Luongo, “Motive Rather than Means,” 43.

¹⁰¹ Ibid.

¹⁰² *Penal Code* (Kenya, 1930), 52.

¹⁰³ Ibid., 51–52.

over “witch-killings,” as they allowed for “witch-killers” to be prosecuted under common law while sidestepping African methods of determining witchcraft. Furthermore, Luongo emphasizes that colonial judges constructed a distinction between the emotions of “fear” and “anger” when assessing the legitimacy of “grave and sudden provocation.”¹⁰⁴ Judges had come to the consensus that “anger” did not evoke one to act with the same uncontrollable suddenness as “fear.”¹⁰⁵ In other words, “anger” helped to prescribe motive but it did not grant perpetrators with the defense of provocation as certainly as “fear.” Therefore, understanding how courts interpreted the defense of “grave and sudden provocation” is central to the determination of justice within the following homicide cases motivated by witchcraft.

Two Murders Motivated by Witchcraft Accusations

On August 4, 1940, Morani killed Nyambura, an older woman from within his Kisii community, under the belief that she had used witchcraft to kill his three children. The Supreme Court appeal trial relied on the testimony of the Nyambura’s daughter, the opinions of three African assessors, and the accused’s official deposition in their assessment of this homicide. Her daughter confirmed the presence of the accused through her eyewitness statement recounting the attack.¹⁰⁶ The prosecution then consulted three African assessors (assumed to be experts on witchcraft practiced in the Kisii community) to determine whether the deceased was believed to be a witch and if the accused genuinely held that belief. They all concluded that they could not be certain that the deceased woman was a witch, but that the accused did believe his life was in danger. Despite their uncertainty, they maintained that the accused “did wrong in killing this woman” because he never

¹⁰⁴ Luongo, “Motive Rather than Means,” 44.

¹⁰⁵ Ibid., 48.

¹⁰⁶ Supreme Court Trial, Kisumu, October 2–3, 1940, AXM1-8-65, KNA, 3–4.

brought the matter before a “native tribunal.”¹⁰⁷

The primary evidence of Morani’s motivation came from his own statement where he expressed his anger over the deaths of his children and fear that he could be her next victim.¹⁰⁸ As Luongo notes, claims of “fear” had previously been effective in securing commutations from murder to manslaughter.¹⁰⁹ However, in this case, the judge focused on the temporal inconsistency of the accused’s narrative. The killing of Nyambura did not take place until five days after the death of his third child; the event which supposedly provoked both his anger and fear. The Supreme court judge interpreted his actions as those of an angry man seeking revenge rather than someone acting out of the fear of imminent danger. Morani’s statement presented emotions that aligned with previous successful precedent for commutation, but the timeframe of the killing undermined the legitimacy of his emotional defense. Morani was then convicted of murder with its accompanying death sentence.

A letter from the Governor of Nairobi on December 7, 1940, stated that this case’s appeal was dismissed by the East African Court of Appeal on November 14. However, on November 29th, the Executive Council and the Governor of Nairobi reviewed the case and concluded that Morani would be extended the “King’s Mercy.” This commuted his original murder conviction to manslaughter with seven years’ imprisonment.¹¹⁰ Historians have noted that murder convictions with the death sentence for witch-killings were imposed at levels many Kenyans described as “overkill.”¹¹¹ This public criticism of colonial authority prompted increased gubernatorial intervention in judicial matters and likely informed the Governor’s decision to reduce the severity

¹⁰⁷ Ibid., 12.

¹⁰⁸ Ibid., 6–10.

¹⁰⁹ Luongo, “Motive Rather than Means,” 48.

¹¹⁰ Letter from the Governor of Nairobi to the Superintendent of the Prison in Nairobi, December 7, 1940, AXM1-8-65, KNA.

¹¹¹ Waller, “Witchcraft and Colonial Law in Kenya,” 180. This term refers to the fact that the only available sentencing for a conviction of murder was death by hanging.

of Morani's conviction. Nonetheless, the 1930 Penal Code lists the "punishment for manslaughter" as life imprisonment.¹¹² Yet, the Governor reduced the sentencing to seven years' imprisonment, which stands in stark contrast to statutory guidelines. This suggests that the "justice" for the murder of women was occasionally not upheld due to extrajudicial factors. An additional case from the Kenya National Archives provides further insight into how confounding variables on colonial legal procedures shaped outcomes of justice for the witchcraft-motivated homicide of women.

Nearly two years later, on October 24, 1942, Makau was brought to trial before the Second-Class Magistrate court in Kitui; a town approximately 100 km east of Nairobi. He was accused of killing his father's second wife, Kavuli, motivated by his belief that she had used witchcraft to kill his son on October 23.¹¹³ Makau's statement reveals that he and the deceased were alone in her house when she provoked him. He proceeded to attack her, and she tried to defend herself but was overpowered and killed outside of her hut. In his testimony, Makau's father claimed to have witnessed the attack and reported it to the Chief of Mutongoni. Makau appeared soon after to confess his wrongdoings.¹¹⁴ The statements from Makau and his father established the sequence of events, but the testimony from other character witnesses focused on the validity of his witchcraft accusations.

Whereas most murder trials in this corpus relied solely on prosecution witnesses, this case included witnesses for both the prosecution and the defense. Two prosecution witnesses asserted that Kavuli had no known history of witchcraft and that the accusations were unfounded.¹¹⁵ In contrast, four defense witnesses declared that they had warned Makau's father that her and her mother were known witches. They also believed that she was responsible for the deaths of five

¹¹² *Penal Code* (Kenya), 51.

¹¹³ Second-Class Magistrate Court, Kitui, transcript, October 24, 1942, AXM1-8-1376, KNA, 6–7.

¹¹⁴ *Ibid.*, 2, 7.

¹¹⁵ *Ibid.*, 3.

children and one adult male.¹¹⁶ The divided testimony was left to the magistrate, who after deliberation, decided this case should proceed to trial under the charge of murder at the Supreme Court of Kenya in Kitui.¹¹⁷

Although the full transcript from the Supreme Court trial in March 1943 is not preserved in the archival record, an official judgment from March 11th survived and details why Makau's case was commuted to manslaughter with ten years' imprisonment.¹¹⁸ The judge reaffirmed there was indisputable evidence of killing, but that witchcraft could constitute "mitigating circumstances" through the logic of grave and sudden provocation.¹¹⁹ Makau was granted this defense because he claimed that he asked Kavuli to stop practicing witchcraft, but she responded by saying, "You are always accusing me of witchcraft, you also will die by witchcraft."¹²⁰ The judge interpreted her statement as a "threat" to Makau's life, a felony charge, that if she were still alive would have been grounds for ten years' imprisonment.¹²¹ The judge was unwilling to pardon Makau from the guilt of homicide but he extended him the "benefit of the doubt" in light of Kavuli's alleged threats.

However, this commutation was complicated by testimony from one witness who questioned why the accused did not use *musebe*, a "well-known medicine" that "prevents a witch from bewitching someone."¹²² The witness said Makau responded by saying that he did not want someone else to persecute Kavuli for her witchcraft, so he did it himself.¹²³ This reasoning raises the question of why Makau resorted to lethal violence rather than spiritual alternatives. The answer

¹¹⁶ Ibid., 5, 8–10.

¹¹⁷ Ibid., 10.

¹¹⁸ Supreme Court Trial, Kitui, judgment, March 11, 1943, AXM1-8-1376, KNA, 10.

¹¹⁹ Ibid., 1–2.

¹²⁰ Ibid., 2.

¹²¹ *Penal Code* (Kenya), 55.

¹²² Second-Class Magistrate Court, Kitui, transcript, October 24, 1942, AXM1-8-1376, KNA, 5. The testimony does not elaborate further on whether this was an herbal remedy or a traditional ritual.

¹²³ Ibid.

requires deeper engagement with witchcraft as was practiced within the Kisii community. Nonetheless, these two cases reveal a consistent pattern wherein accusations of witchcraft allowed men to reposition what appeared to be intentional homicide as a provoked action. The reoccurrence of this maneuver held grave implications on the outcomes of gendered justice within colonial courts.

Witchcraft as a Site for Judicial Leniency

A central aim of this paper is to examine the historical experiences of gendered homicide under colonial law. However, that analysis would be incomplete without examining how perpetrators strategically manipulated the colonial legal system by invoking the supernatural, specifically witchcraft. Witchcraft functioned as a unique legal space in which customary law could be selectively invoked or suppressed to align with colonial imaginaries of upholding broader constructions of paternalism and patriarchy. The most striking pattern across these witch-related homicides is that the accused men ultimately received commutations of their original murder convictions. No other motive in this study proved as effective in securing leniency.

To understand how the colonial logics of gendered justice created an environment conducive to fatal violence against women, it is helpful to briefly examine how witchcraft was typically practiced in relation to gender and homicide by the Kisii and Kamba communities. Unlike European and North American witchcraft that targeted socially transgressive women, Waller notes that witchcraft in Africa was not “gender-exclusive” but differentiated between “male and female types.”¹²⁴ Simone Omare explains that within the Kisii community, the female type of witchcraft was called *enderi*. *Enderi* was typically acquired by a child, most often a daughter, through training

¹²⁴ Waller, “Witchcraft and Colonial Law in Kenya,” 257.

from their mother.¹²⁵ This form of witchcraft was believed to be a destructive force but it could only be exercised against close relatives of the witch. He further notes characteristics that made people vulnerable to witchcraft accusations, one being a woman with gray hair or the elderly.¹²⁶ Whereas, Luongo states that the female version of witchcraft practiced by the Kamba was known as *uoi*. This type of witchcraft was permanently imbued as its power was derived from within her body and could be passed down to her female offspring during childbirth. However, a women must pass two stages of initiation during puberty and motherhood before her powers as a witch were fully actualized.¹²⁷

This background reveals an important demographic factor in women accused of practicing witchcraft: age. Both victims, Nyambura and Kavuli, were elderly women, which increased the likelihood that they could be perceived as initiated witches within Kisii and Kamba communities. As both ethnicities held the belief that witches consolidated their power through killing relatives and children, it becomes clear why in these cases both the accused men interpreted the deaths of their children as evidence of their witchcraft.¹²⁸ However, it should be said that the Kisii and Kamba communities had protective remedies (medicine) for “bad” or “harmful” forms of witchcraft.¹²⁹ The decision by both perpetrators to omit reference to such alternatives suggests that their intention was to eliminate the witch rather than protect themselves. They leveraged the colonial nescience of the particularities of witchcraft to sway the court and the British governor into commuting convictions of murder to manslaughter.

¹²⁵ Simon Omare, “The Role of Abagusii Religious Beliefs and Practices in Violence to Witch Suspects in Kisii County,” unpublished paper, n.d., 7, https://www.academia.edu/download/58882515/the_role_of_abagusii_religious_beliefs_and_practices_in_violence_to_witch_suspects_in_kisii_county_kenya..pdf.

¹²⁶ Ibid., 4. Omare notes that witchcraft practiced by the Kisii could only be enacted upon family and close relatives, but, in recent years, the impact of witchcraft has expanded beyond the family unit.

¹²⁷ Luongo, *Witchcraft and Colonial Rule in Kenya*, 54–55.

¹²⁸ Ibid., 55; Omare, “The Role of Abagusii Religious Beliefs,” 3.

¹²⁹ Omare, “The Role of Abagusii Religious Beliefs,” 22; Luongo, “Motive Rather Than Means,” 35.

A final point regarding the proceedings concerns the interpretation of “customary law.” African assessors typically agreed that the accused believed that witchcraft had been used by the deceased but maintained that it did not justify the killing of these women. According to Omare and Luongo, “witch-killing” in Kamba and Kisii communities was a practice rooted in Indigenous law meant to “restore and ensure order in the community.”¹³⁰ Only when witches were deemed “social malefactors” could their killing be justified to prevent them from “revenging” and causing further social disruption.¹³¹ In Makau’s case from 1942, the Chief of Mutongoni explicitly stated that the killing of a witch in Kamba tradition would have been celebrated.¹³² But retrospective insight reveals that the accused failed to follow established African jurisprudence required for such a killing to be socially acceptable.¹³³ Makau likely understood the social procedures for reporting witchcraft but chose to ignore them, which is reiterated by his request for forgiveness from the Chief following the homicide. This choice demonstrates how male perpetrators selectively referenced African spiritual traditions within the colonial courtroom to justify lethal violence against women.

Given that these cases took place in the early 1940s, colonial and missionary personnel had made many attempts to vilify witchcraft as a “pagan” practice. Many African elite men had maintained positions of power through assimilation of colonial Christian ideologies of rationality. In other words, Christianity demarcated the “intelligent native” or “evolved” from the pagan superstitious. Chief Mutongoni’s remark that assessors would not openly endorse witch-killing within the confines of the colonial court suggests they would repress their own spiritual beliefs to

¹³⁰ Luongo, *Witchcraft and Colonial Rule in Kenya*, 60

¹³¹ Luongo, *Witchcraft and Colonial Rule in Kenya*, 60–61; Omare, “The Role of Abagusii Religious Beliefs,” 9.

¹³² Second-Class Magistrate Trial, Kitui, transcript, October 24, 1942, AXM1-8-1376, KNA, 6.

¹³³ See Waller’s discussion of *King’ole* (public execution) in his article “Witchcraft and Colonial Law in Kenya,” 257.

adhere to colonial and missionary beliefs of monotheism.¹³⁴ The increasing disregard for “customary” law by colonial institutions became apparent through gubernatorial override of judicial verdicts. The British governor on multiple occasions commuted convictions of murder to manslaughter, despite African assessors’ support to uphold the conviction of murder.

Whether these deceased women were truly witches may never be proven beyond a reasonable doubt, but the record demonstrates that witchcraft operated as a powerful rhetorical tool that allowed men to practically get away with murder. Under statutory law, murder would have warranted death by hanging, and manslaughter, life imprisonment, but these cases were reduced to twelve years’ imprisonment or less.¹³⁵ In correspondence between colonial judicial officials and administrators, judges consistently argued to extend mercy to the convicted because their actions were a result of ignorance rather than malice.¹³⁶ This logic reflected the mindset of “paternalism” where colonial authorities that felt responsible for protecting Africans from their own naivete. This paternalism did not stop at the distinction between European and African, and presented itself within the gendered hierarchies intensified by colonial rule. Many colonial authorities felt that the lives of men were more valuable than those of “disobedient” women, especially those whose practice of witchcraft was seen as a direct act of contestation to colonial hegemonic control. The colonial institution’s mercy toward male perpetrators echoed broader logics of patriarchal power that had been inflated by colonial governance and reinforced through the adjudication of gendered homicide.

¹³⁴ Second-Class Magistrate Trial, Kitui, transcript, October 24, 1942, AXM1-8-1376, KNA, 5.

¹³⁵ *Penal Code* (Kenya, 1930), §§ 203 (murder) and 205 (manslaughter), 51–52.

¹³⁶ Letter from Supreme Court judge to the Governor, Nairobi, November 20, 1940, AXM1-8-65, KNA.

Chapter 3: Bridewealth: “If I lost my *mali* [property in Swahili], they must lose also”

Early in the morning of March 11th, 1928, Rashid killed both his recent ex-wife, Namala, and her father in Kacheliba, a town in Western Kenya bordering Uganda. This case was brought to its initial trial at the Second-Class Magistrate in Kacheliba on March 21, 1928, where the judge determined it warranted further trial at the Supreme Court of Kenya under the charge of murder.¹³⁷ During the initial proceedings, it was revealed that Rashid had killed the two victims because of their failure to return his bridewealth.¹³⁸ The case records revealed that before her murder, Namala had gone to her brother for assistance in leaving her husband because he had “hit her again.”¹³⁹ As a result, she filed for divorce in the Third-Class Magistrate court on February 2, 1928. The magistrate ruled that Namala could leave her husband and return to her family if her father agreed to pay back the bridewealth payment of 98 shillings. Her father made a partial payment of that amount in the magistrate’s presence, leaving the remaining balance to be paid within a reasonable amount of time.¹⁴⁰ A letter authored by Rashid, written while he was jailed by the District Commissioner, was submitted as evidence in the Second-Class Magistrate trial. It claimed that the original bridewealth was priced at 288 shillings, yet he only received 50 shillings upon their

¹³⁷ Second-Class Magistrate Trial, Kacheliba, transcript, March 21–22, 1928, AC-1-346, KNA, 14.

¹³⁸ An important clarification of terminology is necessary to justify the use of bridewealth in this analysis. At several points in the court records, the material exchange central to this dispute is recorded as being a “dowry.” This is a significant distinction as “dowry” conventionally refers to wealth brought into a marriage by the wife to her husband, while “bridewealth” refers to wealth transferred from the husband to the wife. I contend that the use of “dowry” in these records, more accurately describes what is now understood as “bridewealth.” First, the term “bridewealth” was not formally introduced to anthropological discourse until 1931 by Edward Evans-Pritchard. As this case dates to 1928, it is likely that the terminology was not yet available to colonial record-keepers. Second, the use of translators and references to witnesses’ use of Swahili suggest that *mali* (property in Swahili) may have been negligibly rendered as “dowry,” and likely reflects colonial tendencies to translate African institutions into familiar European categories. Finally, both the accused’s statement and letter (translated from Swahili to English) clearly indicate that the accused transferred both shillings and livestock to his wife’s father. Therefore, this exchange would be consistent with what would soon be described as “bridewealth.”

¹³⁹ Third-Class Magistrate Trial, Kacheliba, Transcript, February 2, 1928, AC-1-346, KNA, 1.

¹⁴⁰ Ibid., 1–2.

divorce. He said he “felt bitterly” and it led him to kill both Namala and his father-in-law.¹⁴¹ Although the entire Supreme Court transcript from the trial in Kacheliba on June 28, 1928, is unavailable, the judgment recorded Rashid’s primary motivation. He claimed if he lost his *mali* (property in Swahili) then her family should also suffer the loss of something: the life of Namala.¹⁴²

In this chapter, this case from 1928, and another from 1951, reveal how homicide motivated by disputes over bridewealth became a site of judicial contestation. As further analysis will demonstrate, the colonial court struggled over whether the accused man’s loss of property, both his money and wife, constituted sufficient injury to legally mitigate the killing of a woman. Additionally, many of the court actors in the 1928 case were Muslim, offering insight into how colonial courts intervened in the disputes involving Muslim Africans outside of the Kadhi court setting. This chapter reveals how Islamic and African martial disputes entered the colonial courtroom through litigants, leading courts to contest whether murder convictions should be upheld or commuted.

Colonial Bridewealth Legislation

Disputes over bridewealth in colonial Kenya were inextricably linked to marriage and divorces. Both Tabitha Kanogo and Brett Shadle explain that in many African societies’ marriages were illicit without the exchange of bridewealth, or the “livestock, money or services” presented to the bride’s father.¹⁴³ Bridewealth did not just ratify the marriage union between husband and wife but served as a contractual form between two families. From this perspective, bridewealth was a foundational aspect of social and economic stability within African societies.

¹⁴¹ Second-Class Magistrate Trial, Kacheliba (proceedings March 21–22, 1928), letter from the accused submitted as evidence, March 22, 1928, AC-1-346, KNA, Nairobi.

¹⁴² Supreme Court Trial, Kacheliba, judgment, June 28, 1928, AC-1-346, KNA, Nairobi, 3.

¹⁴³ Kanogo, *African Womanhood in Colonial Kenya*, 50; Shadle, “Girl Cases”, 7.

Early European colonial and missionary perceptions misunderstood the sociocultural significance of bridewealth. They believed that Africans were inclined to treat their women as a commodity by exchanging her for material goods, predominantly cattle. However, in their study of South Africa, Jean Comaroff and John Comaroff emphasize that this perception ignored the “moral economy of persons” that occurred simultaneously with the exchange of cattle.¹⁴⁴ They confer that bridewealth exchange was both “the mediating link between production and exchange” as well as “a means of forging social ties.”¹⁴⁵ This understanding illuminates how Africans viewed the exchange of bridewealth as a means for invigorating social (re)production to produce “wealth in people.”¹⁴⁶ Lynn Thomas describes this as the “access to and control over knowledgeable dependents” that distinguished the wealthy from the poor.¹⁴⁷ Bridewealth delivered to the wife’s family, typically her father, was to reconcile the husband’s gain and the father’s loss of “women’s reproductive and productive labor,” while fortifying the “alliance between the two families or clans.”¹⁴⁸ Furthermore, Thomas notes how in Kenya, patrilineal societies sought to use bridewealth to reinforce a sense of social cohesion “that disciplined women, made husbands into household heads, and strengthened marriage as an exchange between families.”¹⁴⁹

Colonial expansion brought with it another layer of gendered control through the mission of instilling and normalizing patriarchal authority. Kanogo notes that early twentieth-century colonialism was demarcated by a “concern over the erosion of patriarchal authority,” which led colonial administrators to intentionally “exclude female voices” from discussions over

¹⁴⁴ John L. Comaroff, “Goodly Beasts, Beastly Goods: Cattle and Commodities in a South African Context,” *American Ethnologist* 17, no. 2 (1990): 196, <https://doi.org/10.1525/ae.1990.17.2.02a00010>.

¹⁴⁵ *Ibid.*, 197.

¹⁴⁶ Shadle, “*Girl Cases*”, 1.

¹⁴⁷ Lynn Thomas, *Politics of the Womb: Women, Reproduction, and the State in Kenya* (Berkeley: University of California, 2003) 15, <https://doi.org/10.1525/9780520936645>.

¹⁴⁸ Kanogo, *African Womanhood in Colonial Kenya*, 104–105.

¹⁴⁹ Thomas, *Politics of the Womb*, 14.

“bridewealth, [and] diverse marriage-related issues.”¹⁵⁰ The effort to increase legal restrictions on women’s agency through the manipulation of the marriage institution was a concerted effort of both European and African men. African male elders jumped at the opportunity to manipulate tradition “by reinventing customary law and totally subsuming women’s voices to male domination.”¹⁵¹ This was most effectively applied in the creation of “customary law” on bridewealth that explicitly protected the wealth of the bride’s father rather than women’s domestic wants or safety.¹⁵²

Shadle describes the late 1930s as a pivotal turning point in the interactions of the British colonial administration with African marriage institutions. Colonial administrators had viewed African marriage customs as a quintessential aspect of “tribal integrity” that ensured “colonial stability,” but by the 1930s, they were seen as “backward [and] roadblocks to new imperial goals.”¹⁵³ Colonial administrators sought to restructure marriage from within by appointing “highly educated elders”—colonial allies—to positions of legal authority in Local Native Courts (LNCs).¹⁵⁴ This worked to reduce administrative and legal reliance on Indigenous marriage structures such as polygamy. By employing African men to legally enforce colonial and missionary ideas of monogamous marriage, they hoped to better regulate the social relations of Africans. This was often achieved through changing the social and moral expectations of “respectable” women.

Disputes over bridewealth during the dissolution of marriage or partnership presented considerable risks to the women involved. Bridewealth in colonial Kenya increasingly became a

¹⁵⁰ Kanogo, *African Womanhood in Colonial Kenya*, 6.

¹⁵¹ *Ibid.*, 53.

¹⁵² *Ibid.*, 18.

¹⁵³ Shadle, “*Girl Cases*”, xxv.

¹⁵⁴ *Ibid.*

social institution for regulating women, undergirded by fathers who viewed their daughters as a source of wealth and husbands who invested heavily for women's social reproductive potential. The cases that follow illuminate the extreme forms of danger women faced in ending a marriage union when husbands resorted to violence after the loss of their *mali* (property in Swahili).

Two Murders Motivated by Bridewealth Disputes

Returning to the trial from 1928, the murder of Namala and her father primarily resulted from the poor handling of bridewealth during her divorce from Rashid. Namala's prior divorce complaint reveals a concurrent influence on Rashid's decision to kill his wife. In the Third-Class Magistrate divorce trial, Namala detailed how Rashid relentlessly accused her of having an affair with another man, despite her persistent denial. She said he proceeded to physically assault her before saying, "Now go back to your brother, I do not wish to see you again, give me back the money for which I bought you."¹⁵⁵ The dispute was momentarily settled after the third-class magistrate confirmed Rashid was satisfied with the termination of their marriage if the bridewealth was returned, and Namala's brother agreed to repay.¹⁵⁶ As one would soon find out in the proceedings of the Second-Class Magistrate murder trial, this agreed upon price was not satisfactory to either party, as Rashid killed both his ex-wife and father-in-law just eleven days later.¹⁵⁷

Rashid expressed his anger over Namala's use of the colonial legal system in a letter presented as evidence in the Second-Class Magistrate murder trial.¹⁵⁸ In the Third-Class Magistrate trial transcript, Namala and Rashid are labelled as "Islam" and "Mohammedan," meaning Muslim. In her study on bridewealth disputes in Muslim tribunals in colonial Senegal, Ghislaine Lydon

¹⁵⁵ Third-Class Magistrate Court, Kacheliba, transcript, February 2, 1928, AC-1-346, KNA, Nairobi, 1.

¹⁵⁶ *Ibid.*, 2.

¹⁵⁷ Supreme Court, Kacheliba, guilty plea in judgment statement, June 28, 1928, AC-1-346, KNA.

¹⁵⁸ Letter submitted as evidence, Second-Class Magistrate Court, Kacheliba, March 22, 1928, AC-1-346, KNA.

details that if a divorce was initiated by the wife, she was typically required to “reimburse the bridewealth.”¹⁵⁹ Therefore, Namala’s choice to seek a divorce in the colonial courts appeared to be for her economic benefit, likely in retaliation for Rashid’s alleged abuse. He felt resentment that the colonial court both lowered the value and delayed the swift repayment of his bridewealth. This situation illuminates how Namala’s decision to leave her abusive marriage became dangerous through the colonial court’s intervention in handling a matter with existing Islamic legal procedures.

On June 28, the Supreme Court convicted Rashid of murder and sentenced him to death.¹⁶⁰ Rashid felt that the loss of control over his property—both of Namala and his bridewealth—was a justifiable motive for murder and made a plea to the East African Court of Appeal. On July 27, he attempted to change his plea of guilty to that of not guilty by provocation, in hopes of reducing his death sentence.¹⁶¹ However, the East African Court of Appeal agreed with the murder conviction given by the Supreme Court and dismissed his appeal on September 4, 1928.¹⁶²

In another case of disputed bridewealth, Mbuku was tried at the Supreme Court of Kenya in Nairobi on August 13, 1951, for the murder of “wife,” Koki, in March of 1950.¹⁶³ In trial, Mbuku claimed that her father refused to accept his bridewealth payment, despite having agreed upon an amount prior to their cohabitation.¹⁶⁴ However, Koki’s father reasserted that he had not received any bridewealth from the accused, so he sent his wife, Ndunge, to retrieve their daughter from an

¹⁵⁹ Ghislaine Lydon, “Obtaining Freedom at the Muslims’ Tribunal: Colonial Kadijustiz and Women’s Divorce Litigation in Ndar (Senegal),” in *Muslim Family Law in Sub-Saharan Africa*, ed. Shamil Jeppe, Ebrahim Moosa, and Richard Roberts (Amsterdam: Amsterdam University Press, 2010), 145.

¹⁶⁰ Supreme Court of Kenya, Kacheliba, judgment, June 28, 1928, AC-1-346, KNA, Nairobi.

¹⁶¹ Memorandum of Appeal to the East African Court of Appeal, Kacheliba, September 4, 1928, AC-1-346, KNA, Nairobi.

¹⁶² East African Court of Appeal, Nairobi, judgment, September 4, 1928, AC-1-346, KNA, Nairobi, 2.

¹⁶³ Letter from Court Clerk to Executive Council, June 18, 1951, AXM1-8-414, KNA. The letter reports that the accused had escaped custody from Kitui Prison on June 18, 1950, and was not recaptured until June 18, 1951, delaying the case’s transfer to the Supreme Court for over a year.

¹⁶⁴ Supreme Court of Kenya, Nairobi, trial transcript, August 13, 1951, AXM1-8-414, KNA, Nairobi, 5–6.

illegitimate marriage.¹⁶⁵ Ndunge's testimony recounts the fatal encounter with the accused. She said her and Koki were returning home when Mbuku ran up to speak with Koki and then suddenly put an arrow through her heart.¹⁶⁶ Attempting to provide some defense for his actions, Mbuku's testimony maintained that he was drunk and did not "shoot [her with an arrow] to prevent any other man from taking her."¹⁶⁷ The judge did not accept his defense of drunkenness. On August 21st, Mbuku was convicted of murder with a death sentence, because he had "deprived an entirely innocent woman of her life."¹⁶⁸

The official judgment illuminated the two main influences on his murder conviction: the opinions of the African assessors and the witness testimony of Ndunge. First, the African assessors were asked two questions about whether the accused was drunk and if he killed his wife. They all unanimously replied they believed that he was not drunk and that he intentionally killed Koki.¹⁶⁹ Second, the judge found Ndunge to be a "completely truthful witness," and believed her statement to be solid evidence against the accused because she was there during the attack.¹⁷⁰ The judge's reported trust in Ndunge's character illuminates how the presence of respected, senior women in trial could play a crucial role in shaping outcomes of justice for deceased women.

Throughout the Supreme Court trial, Mbuku maintained that he had no motive as he was not in the right mind due to being drunk. However, correspondence from the D.C. of Kitui to the Executive Council in Nairobi revealed a much more sinister reality. The D.C.'s report contains interviews from Mbuku's community in the town of Kitui where the killing took place. The fifth point recounts a conversation held with the accused about his motive. The accused replied:

¹⁶⁵ Ibid., 2–3.

¹⁶⁶ Ibid., 3–4.

¹⁶⁷ Ibid., 6.

¹⁶⁸ Supreme Court Trial, Nairobi, judgment, August 21, 1951, AXM1-8-414, KNA, 2.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., 1.

I had married one wife and she had been taken away, and when I married the second, and her father kept on taking her away, I said, I will kill her, and then her father will be obliged to accept (as blood money) the bride price he scorns, when I hand back her dead body.¹⁷¹

This report ultimately revealed the accused's most transparent motive for this homicide, which was that Koki's father refused to accept his bridewealth payment. Mbuku felt scorned by Koki's father for taking back his soon-to-be wife after refusing to accept the bridewealth. While the available case records leave some speculation as to exactly what occurred regarding Mbuku's bridewealth payment, one point is clear: the killing of Koki was the result of a dispute between two men who utilized her body as a site through which to settle their bridewealth disagreement.

Mbuku later appealed his charge to the East African Court of Appeal, but his case was dismissed. The judges said they could not in good conscious commute his conviction because of the inconsistencies in his defense between the Second-Class Magistrate and Supreme Court trials. In the Supreme Court trial Mbuku's defense was drunkenness, but his earlier statement from the Magistrate court, read: "I saw that my wife loved me and did not want to go with another man, so I killed her."¹⁷² The judge from the Court of Appeals believed that Mbuku's inconsistent defense was an attempt to mitigate his death sentence, and that this killing was ultimately motivated by Koki's father's refusal to accept Mbuku's bridewealth payment.

Despite the conviction of murder with a death sentence remaining throughout judicial rulings, a letter from the Governor of Nairobi to the Prison Superintendent requested that the accused's conviction be commuted to manslaughter and his sentence reduced to ten years'

¹⁷¹ Report from the District Commissioner of Kitui to the Executive Council, October 24, 1951, AXM1-8-414, KNA.

¹⁷² East African Court of Appeal, Nairobi, judgment, October 19, 1951, AXM1-8-414, KNA, 2.

imprisonment.¹⁷³ Similarly to cases of witchcraft-motivated killings, there appears to be a broader pattern of reducing convictions and sentencing for the homicide of women. Such repetitive instances of leniency toward male perpetrators prompts further questioning about how gender influenced colonial conceptions of justice and punishment. Law alone cannot reduce outcomes of violence, but the significant reduction in punishment for murder indicates a severe lack of commitment to justice in cases of the homicide of women.

Bridewealth as a Site for Judicial Contestation

These two disputes over bridewealth that resulted in fatal violence against women, took place because of a disagreement between two male “household heads.” That is not to erase women’s agency, rather it serves to elucidate the gendered nature of bridewealth that both allowed for violence to occur and for colonial institutions to selectively administer justice. Bridewealth was not inherently patriarchal, but it was founded on the social reproduction of patrilineal societies.¹⁷⁴ And colonization served as a transformative period where men manipulated bridewealth to increase their control over women’s social and economic movement.¹⁷⁵ This reinvention of bridewealth took on increasingly patriarchal and transactional characteristics that utilized the social (re)production of women as a site to achieve broader political aims.¹⁷⁶

Furthermore, these outcomes of fatal violence emerged from the contention of women’s agency with bridewealth institutions. This is particularly the case in the intimate arena of marriage dissolution. In both cases, the male perpetrators elicited intense emotive responses when they heard news of their partner leaving, but the bridewealth impacted them in different ways. Rashid

¹⁷³ Letter from the Governor to the Prison Superintendent, November 29, 1951, AXM1-8-414, KNA.

¹⁷⁴ Thomas, *Politics of the Womb*, 14.

¹⁷⁵ Kanogo, *African Womanhood in Colonial Kenya*, 3.

¹⁷⁶ Comaroff, “Goodly Beasts, Beastly Goods,” 209.

murdered his wife and father-in-law because they refused to return his bridewealth in full. Whereas Mbuku killed his “wife” out of spite because her father refused to accept any exchange of bridewealth despite his multiple efforts. Both the accused men were upset, in some regard, by the loss of their property because of a bridewealth disagreement. Rashid was convicted of murder and Mbuku’s conviction was reduced to manslaughter. Despite the East African Court of Appeal’s denial that drunkenness could constitute mitigation, the gubernatorial override indicated they believed there were mitigating circumstances. The source does not elaborate on this reasoning, but one might infer that the Governor interpreted Mbuku’s act to be elicited out of provocation because the woman he wanted to be his wife was taken without any warning.

In both cases, violence emerged from bridewealth disputes not because it was the natural escalation, but because men were trying to restore control inscribed in cultural expectations of gender and marital contracts. The absence of these deceased women from their own trial created a space of legal ambiguity where men could air their grievances in such a manner that contested the humanity of the women they killed. Justice for the murder of these women was, thus, filtered through male excuses for gendered violence that attempted to equate the loss of a woman’s life with the harm of a man’s property loss. The determination of justice, thus, symbolically afforded value to a women’s life through upholding a conviction of murder. By examining judicial rulings alone, justice was upheld, but it could be undermined by extrajudicial state structures.

The limits of gendered justice were revealed most clearly after the accused man’s guilt had been established. The governor’s power to commute convictions and reduce sentencing for male perpetrators revealed that punishment for the murder of women was negotiable. This functioned to allow the colonial administration to affirm legal authority through the outward appearance of serving justice. But “His/Her Majesty’s mercy,” determined by the Governor of Nairobi, allowed

administrative structures to intervene in judicial rulings. This rendered the accused men more easily governable but treated justice for women victims as expendable in light of colonial administrative priorities, particularly the expansion of male labor within the prison system. Ultimately, emotional or financial injury caused by disputes over bridewealth did not protect men from judicial punishment, and colonial governance was more likely to treat women's lives as expendable. Trials over the homicide of women motivated by bridewealth became a legal, cultural, and moral battleground where murder convictions were selectively upheld.

Chapter 4: Marital Abandonment: “A prostitute has left you”

On October 10, 1949, Mutuku was brought to trial at the Resident Magistrate court in Mombasa for the murder of his wife, Mwikali. Mutuku and Mwikali’s marriage union was a result of a leviratic marriage, also known as “wife inheritance,” whereby a widow was given to the deceased husband’s brother or male family member.¹⁷⁷ Mwikali became wed to Mutuku following the death of her husband.¹⁷⁸ However, this fatal dispute began when Mwikali told Mutuku that she wanted to return to her family and live with her uncle. In his statement to the District Officer of Mombasa on October 11, Mutuku said his relationship with his wife had grown sour and she eventually began acting like a “prostitute.” He said that two men each gave him two cows as reconciliation for her adulterous activities.¹⁷⁹ Despite Mutuku’s accounts of her alleged disobedience, testimony from both her uncle and 13-year-old son posited that the accused had been beating her. Her son worked in another city but returned to their family home three days before their final quarrel. He recounted that his mother told Mutuku that she was going to leave for her uncle’s village, and he replied, “If you do go, see what happens.”¹⁸⁰ Her uncle’s testimony said he had met with Mwikali and Mutuku earlier that day to try to settle their dispute, and that they all agreed she would depart the next day.¹⁸¹ However, Mutuku recounted that he began to search for Mwikali later that day when she did not return from fetching water. He eventually found her by the well with an unknown man and questioned her of his identity. He said she responded, “I won’t be asked by a dog like you.”¹⁸² This upset him, and he caused him to bludgeon her to death. On

¹⁷⁷ Kanogo, *African Womanhood in Colonial Kenya*, 65.

¹⁷⁸ Resident Magistrate Court Trial, Mombasa, transcript, October 11, 1949, AXMI-8-344, KNA, 2.

¹⁷⁹ Resident Magistrate Trial, Mombasa, exhibit 4 (statement from the accused), October 11, 1949, AXMI-8-344, KNA.

¹⁸⁰ Resident Magistrate Court Trial, Mombasa, transcript, October 11, 1949, AXMI-8-344, KNA, 2.

¹⁸¹ *Ibid.*, 3–4.

¹⁸² Resident Magistrate Court Trial, Mombasa, exhibit 4 (statement from the accused), October 11, 1949, AXMI-8-344, KNA.

October 23, the Resident Magistrate court's judge committed Mutuku to be tried under the charge of murder.¹⁸³ On November 9, he stood trial at the Supreme Court of Mombasa and was convicted of murder.

Throughout this chapter, this case from 1949, and another from 1964, are utilized to reveal how homicide motivated by a woman's marital abandonment was adjudicated in colonial courts. These disputes rely heavily on the institutionalization of marriage and divorce under colonialism, which was increasingly associated with the construction of "respectable" women. The accused men repeatedly evoked women's immoral character attempting to mitigate their punishment. The 1964 case, in particular, illustrates how the written preservation of women's voices helped to preserve their character. The cases that follow demonstrate how homicides motivated by marital abandonment consistently resulted in murder convictions because colonial courts understood domestic violence as a threat to their control over African social life.

Colonial Marriage Legislation

Similarly to the murders motivated by bridewealth, the following murders motivated by abandonment were intimately linked to the marriage institution. Therefore, a discussion of colonial legislation on marriage and adultery is crucial to contextualizing the relation of fatal gendered violence with marital abandonment. Most ethnic groups in precolonial Kenya were structured around patrilineal social relations and inheritance, alongside polygamous marriage.¹⁸⁴ Polygamy, practiced among patrilineal cultures, was understood as a means for men to increase their social and economic capital and display their status through reproduction.¹⁸⁵ Under this system, women

¹⁸³ Resident Magistrate Court Trial, Mombasa, transcript, AXM1-8-344, October 21, 1949, AXM1-8-344, KNA, 6.

¹⁸⁴ There were exceptions within a few ethnic groups such as the Kikuyu, Diga, and some Swahili societies that had a history of matrilineal inheritance and social relations.

¹⁸⁵ Kanogo, *African Womanhood in Colonial Kenya*, 135.

who left a marriage could not formally be “divorced,” meaning that her children and bridewealth remained the property of her former husband.¹⁸⁶ Kanogo explores how these marriage practices came under the scrutiny of colonial governance and legislation in the first half of the twentieth century.

British legal intervention into the marriage institution began in 1902 with the East African Marriage Ordinance. It sought to Anglicize Kenyan marriages by enforcing registration with native authorities.¹⁸⁷ Their objective was to eliminate the practice of polygamy, as it contradicted British and Christian morals of “purity” and “faithfulness,” and replace it with “civil and statutory” expectations of monogamy.¹⁸⁸ Christian missionaries, in particular, painted polygamy as a pagan practice that posed a major threat to the maintenance of the monogamous family structure.¹⁸⁹ Colonial attempts to restructure and regulate African marriage proved to be relatively superficial, highlighting the limits of colonial hegemonic control over the domestic sphere.

The murders examined in this chapter resulted from marital abandonment but were accompanied by accusations of adultery by either spouse. Generally, in African legal practice instances of adultery were settled through compensation to the injured party.¹⁹⁰ Shadle explains that adultery became a site of colonial legal contestation in the 1930s, as colonial officials pined over whether it should be considered a “civil dispute or a criminal act.”¹⁹¹ Kenya had adopted adultery as a criminal offense from the Indian Penal Code in 1897, but it was temporarily decriminalized in 1930 when it was replaced by a new ordinance that did not explicitly address adultery.¹⁹² However, relentless complaints from colonial administrators about how the

¹⁸⁶ Ibid., 134.

¹⁸⁷ Ibid., 131.

¹⁸⁸ Ibid., 135.

¹⁸⁹ Ibid., 112–113, 134.

¹⁹⁰ Shadle, “*Girl Cases*”, 14, 53.

¹⁹¹ Ibid., 53.

¹⁹² Ibid., 54.

decriminalization of adultery had ruptured African social relations, led the Attorney General to reinstate adultery as a criminal offense in March 1933.¹⁹³ This recriminalization signified the colonial administration's efforts to suppress promiscuity to "preserve law and order."¹⁹⁴ Adultery often precipitated the fissure of marital unions, but does not itself explain how marital abandonment translated into extreme forms of gendered violence against women.

Stacey Hynd's study of domestic murder in Kenya connects the issue of marital abandonment to homicide by illuminating how gendered power imbalances were both the "cause and consequence" of violence within the domestic setting.¹⁹⁵ Murder trials related to marriage disputes from 1930 to 1956 were succinctly punished, but colonial discourse still framed "female delinquency" as a threat to "male self-control."¹⁹⁶ Hynd emphasizes that husbands frequently responded violently to control their wives exertion of agency, particularly her sexuality.¹⁹⁷ Control over women's sexual expression was intimately linked to gendered violence, as men perceived their wives' agency as a threat to their authority. Therefore, accused men's invocation of "desertion" (abandonment) as a defense for lethal outbursts in trial was punished severely, as the colonial state interpreted such violence as "vengeful."¹⁹⁸ The following cases demonstrate how male "loss of control" constituted both the motive for murder, and an attempted line of defense for commuting convictions of murder to manslaughter, albeit unsuccessfully.

Two Murders Motivated by Marital Abandonment

In October 1949, Mutuku was charged with murder for the killing of his wife, Mwikali, after she

¹⁹³ Ibid., 55.

¹⁹⁴ Ibid., 50–51.

¹⁹⁵ Stacey Hynd, "Fatal Families," 164.

¹⁹⁶ Ibid., 163.

¹⁹⁷ Ibid., 165.

¹⁹⁸ Ibid., 165.

decided to leave him. Throughout the Resident Magistrate court's trial in Mombasa, Mutuku alleged that Mwikali was sexually promiscuous and attempted to use her "bad character" as justification for homicide. He emphasized that seeing her by the well with another man provoked in him such anger that he was unable to stop himself from killing her.¹⁹⁹ Additionally, a letter from the D.C. of Mombasa to the Executive Council and Provincial Commissioner of Mombasa indicated that the accused had a substantial criminal history including several allegations of violence against women. While this record does not expand upon the details of these incidents, it states that within the 10 years before this killing, Mutuku had been driven out of the coastal districts of Kilifi and later Kwale. Upon his return to Kilifi, he promised in a *baraza* (public meeting in Swahili) held by his Chief to maintain good behavior.²⁰⁰

On November 9, 1949, many of the same court actors appeared to testify at the Supreme Court trial in Mombasa. Mwikali's son and uncle took the stand and repeated what they had claimed in the Magistrate court. That Mwikali wanted to leave her husband because he was beating her, and that she had not been "going" with other men as she didn't have male friends.²⁰¹ Following further interrogation, Mutuku's unsworn statement shifted slightly to say that he did not catch his wife committing adultery. He admitted that he did not see any sexual contact when she was by the well, but that he killed her because she had disobeyed him by merely speaking with another man.²⁰² After the testimony closed, the judge then asked the three African assessors their thoughts on the incident. They all agreed that the accused had intentionally killed his wife and that he was guilty of murder.²⁰³

¹⁹⁹ Resident Magistrate Court Trial, Mombasa, exhibit 4 (statement from the accused), October 11, 1949, AXM1-8-344, KNA.

²⁰⁰ Letter from the District Commissioner of Mombasa to the Executive Council and Provincial Commissioner, Mombasa, December 30, 1949, AXM1-8-344, KNA, Nairobi.

²⁰¹ Supreme Court Trial, Mombasa, transcript, November 9, 1949, AXM1-8-344, KNA, 2-4.

²⁰² *Ibid.*, 6.

²⁰³ *Ibid.*

In the Supreme Court judgment given on November 9, the judge took Mutuku's statement of not catching his wife in the act of adultery, as an admission that he killed her because he was losing control over her. The judge denied his defense of provocation because her actions were not a sufficient cause of anger, and because he attacked his wife with the "obvious intention to kill her."²⁰⁴ As a result, Mutuku's appeal was dismissed and he was convicted of murder with a death sentence by hanging.²⁰⁵ Both trial proceedings and accompanying documentation reveal that Mutuku's motivation for murder was ultimately a loss of control triggered by Mwikali's decision to leave him. For, if she was living in a far-off town, how could he ensure that she would not go with other men?

Another similar case of marital abandonment tried from 1964 to 1965, falls within the immediate post-independence period, and illustrates the continued operation of inherited colonial judicial logics and procedures.²⁰⁶ The legal treatment of this homicide appears consistent with late colonial practice indicating continuity rather than a complete rupture. On June 29, 1964, the accused, Samuel, was first brought to trial for the murder of his wife, Mary, at the Resident Magistrate court in Thika; a town a few kilometers north of Nairobi.²⁰⁷ The details of this trial are not included in the archival record, but the magistrate judge ruled that this case should face further trial under the charge of murder at the Supreme Court in Nairobi on September 21, 1964.

In the Supreme Court trial transcript, several witnesses detail the events of Mary's murder on the night of June 29, 1964. Mutua, the deceased's male neighbor, testified that Mary's mother, Nzisa, asked him to take her daughter, Nzyoka, back to her husband and inquire about the cause

²⁰⁴ Supreme Court Trial, Mombasa, judgment, November 9, 1949, AXM1-8-344, KNA, 2.

²⁰⁵ Ibid., 3.

²⁰⁶ 1964-1965, AC-1-5517, KNA.

²⁰⁷ Summary of Legal Information on the Accused, September 21, 1964, AC-1-5517, KNA.

of their domestic dispute. She did not ask him to take Mary, but she accompanied them anyways.²⁰⁸ He said they had only gone about 100 yards when he heard footsteps and turned to see that Samuel had caught Nzyoka.²⁰⁹ In her testimony, Nzyoka recounted that she told Samuel, “I am not your wife,” so he let her go and began chasing after Mary.²¹⁰ Once he reached Mary he began to strike her with his axe, but Mutua intervened and was slashed in the face with a knife.²¹¹ Nzyoka recounted, that once Samuel had fought off Mutua, he ran back to Mary and knocked her down. Mary screamed out for her “mama,” but she fell silent after he stabbed her for the final time.²¹² Nzisa testified that she heard Mary’s screams and came out from her house with a lamp and a *panga* (machete in Swahili) to find her deceased.²¹³

The “summing up” statement from the Supreme Court trial transcript, includes a statement made by Samuel to the police which painted a very different picture of the events surrounding Mary’s murder. He proclaimed that his wife was a “prostitute,” and suggested her death was likely the result of an “unsatisfied customer.”²¹⁴ For his alibi, he claimed to have been drinking at a bar and fell asleep which was why he was found with no blood on him. Also, he asserted he had no reason to kill her because their families had planned to meet on July 4 to help reconcile their marriage.²¹⁵ The three assessors dismissed his alibi because there was no one to corroborate his presence at the bar, and that he should have gone to the “church Elders” if there was an issue with his marriage.²¹⁶ In the Supreme Court judgment presented at the end of the trial, the judge stated

²⁰⁸ Supreme Court Trial, Nairobi, transcript, September 21–October 23, 1964, AC-1-5517, KNA, 3.

²⁰⁹ Ibid., 2.

²¹⁰ Ibid., 4–5.

²¹¹ Ibid., 3.

²¹² Ibid., 5–6.

²¹³ Ibid., 13.

²¹⁴ Supreme Court Trial, Nairobi, exhibit 7 (accused’s statement to police on June 30, 1964), September 21–October 23, 1964, AC-1-5517, KNA, 27.

²¹⁵ Supreme Court Trial, Nairobi, transcript, September 21–October 23, 1964, AC-1-5517, KNA, 21.

²¹⁶ Ibid., 22.

he completely agreed with the opinions of the assessors, and convicted Samuel of murder, sentencing him to death by hanging.²¹⁷

While the judge wrote that his guilt was primarily determined by the statements from Mutua and Nzyoka, he mentioned that it was also heavily influenced by written correspondence presented as evidence in court. In the trial, Nzisa stated that Mary had given her two handwritten letters in Swahili (written in Latin script, not Arabic script) on the morning of her fatal attack on June 29, 1964.²¹⁸ Mary told her mother that she received them within the last week, but did not give her any further details. Nzisa then gave the letters to the Police Inspector after her murder.²¹⁹ There was a total of three letters submitted as evidence—originally written in Swahili by both Mary and Samuel and translated by the court into English. Two were from Samuel to Mary and one was a response from Mary to Samuel. The initial letter from Samuel, dated June 27, 1964, described how he reached out to his estranged wife and tried to get her to speak to him.²²⁰ Mary's response repeatedly pointed out that Samuel had a mistress, and since their child had died, there was nothing to keep them together.²²¹ However, the third letter, containing a response from Samuel, was understood by the British judge and three African assessors to contain the true motivation behind this murder. In his response, Samuel acknowledged that his wife would not return to him, and he threatened that she would see what he would do if she were to marry another man.²²² His letter was understood to be proof that this murder was premeditated and, therefore, aligned with the legal definition of murder.

²¹⁷ Supreme Court Trial, Nairobi, judgment, September 21–October 23, 1964, AC-1-5517, KNA, 1.

²¹⁸ Supreme Court Trial, Nairobi, transcript, September 21–October 23, 1964, AC-1-5517, KNA, 12.

²¹⁹ *Ibid.*, 13.

²²⁰ Supreme Court Trial, Nairobi, exhibit 5(1) & 11 (letter from Samuel to Mary on June 27, 1964), September 21–October 23, 1964, AC-1-5517, KNA.

²²¹ Supreme Court Trial, Nairobi, exhibit 6 & 12 (letter from Mary to Samuel, undated), September 21–October 23, 1964, AC-1-5517, KNA.

²²² Supreme Court Trial, Nairobi, exhibit 5(2) & 10 (letter from Samuel to Mary on June 29, 1964), September 21–October 23, 1964, AC-1-5517, KNA.

Marital Abandonment as a Site for Justice

Within this legal corpus, trials over murder motivated by marital abandonment most often received murder convictions for the homicide of women. That this pattern persists even in a case tried from 1964 to 1965 (after formal independence on December 12, 1963, but over the course of Kenya becoming a republic on December 12, 1964), underscores the durability of colonial legal logics governing the adjudication of women's homicide. Murder convictions can be interpreted as the colonial court upholding "justice" for the woman victim, but they were not reached without allowing accused men to express their grievances in a public setting. This often took the form of intense scrutiny of the deceased woman's character. In these two cases, and others motivated by abandonment available to this study, the accused men persistently portrayed their wives as "prostitutes" or lacking in "sexual morality." It appears that accused men tried to have their injury resonate with broader colonial patriarchal imaginaries, as they were actively colluding over the regulation of women's sexuality as a means to control African social and family structures.

Despite the negative portrayal of these deceased women, it appears that the court's reliance on colonial legal precedent helped to obtain favorable verdicts for these women victims. As we have seen previously, in cases of witchcraft- and bridewealth-motivated homicide of women, male perpetrators were given more leniency by the colonial courts and executive council. However, this chapter reveals how accused men in cases of homicide motivated by a woman's marital abandonment were not granted that same leniency. Hynd proposes that the deployment of capital punishment operated as both a deterrent to crimes that threatened "law and order," and as a tool to mitigate the occurrence of domestic "violence within African communities."²²³ This suggests that

²²³ Hynd, "Fatal Families," 162.

murder convictions in cases of marital abandonment may have been less about ascribing legal value on the life of a woman victim than about finding alternative ways to regulate domestic order.

From this perspective, justice for murdered women in cases of abandonment was symbolically upheld through the conviction of their killers, but it remained embedded within broader colonial goals of maintaining social control. Nonetheless, the words of the deceased women, preserved in letters or relayed by relatives, revealed the most convincing motives for their murders. In both cases, the women insisted on leaving marriages that most likely no longer suited their needs. Their insistence on divorce led to written evidence, from previous complaints or personal correspondence, that became central to the courts' rejection of the accused's attempts at mitigation. It is significant that their voices were preserved in the written form, because colonial courts saw this as legitimate evidence and it likely helped to secure murder convictions. In this sense, the deceased women's voices were able to reach out from beyond the grave to give them an almost spectral presence within colonial courts. Their scorned husbands may have tried to soil their reputations, but at least within colonial legal logic these women victims had secured some semblance of justice for their homicide.

Conclusion: Gendered Logics and Historicizing Femicide

As femicide was, and still is not, a formal legal category in Kenya, it was never given a designated space to exist within colonial legal archives. This study relied on innovative methodology to create a “femicide archive,” or a compilation of legal records on the homicide of women, through which the colonial court’s adjudication of femicide can be analyzed and interpreted. As these legal records were obtained from the archive, they were intimately shaped by the complex entanglement of gender, power, and representation within colonial institutions. By acknowledging the patriarchal conditions of their creation and preservation, this study reads against archival assumptions to reconstruct the “logics of gendered justice” embedded within colonial courts’ adjudication of femicide. This study examines six cases of femicide, tried between 1928 to 1965 and categorized according to motives of witchcraft, bridewealth, and abandonment, to understand how murder convictions were negotiated and upheld in colonial Kenyan courts.

Recognizing that colonial courts operated in a hybrid legal form allowed this study to examine how Indigenous and Islamic law entered common law adjudication to influence legal interpretations and outcomes. Murder trials over women’s homicide reveal how gender in colonial courts became constructed through multiple legal and social systems to affect how deceased women were represented and valued. This study reveals that rather than producing a consistent pattern of impunity or protection for cases of femicide, legal outcomes shifted according to how motives of both the accused and colonial institutions were interpreted through understandings of gender, authority, and social order. Each motive category produced different sentencing based on judicial and gubernatorial priorities. Witchcraft accusations most frequently resulted in the commutation of murder convictions, bridewealth disputes both upheld and commuted rulings depending on circumstances, while marital abandonment more consistently upheld murder

convictions. Colonial courts didn't simply adjudicate femicide; they defined which forms of fatal violence against women were tolerable and punishable. The following discussion summarizes this study's findings to clarify how colonial courts interpreted cases of femicide, how convictions often preserved or perhaps reinvented patriarchal order, and how these gendered logics of colonial justice endured beyond political transition.

Conviction outcomes in these colonial femicide cases reveal that gendered justice was conditional and dependent on how motives for killing furthered colonial priorities of order. Motives for murder were the most juridically productive category as they enabled courts to translate African social conflicts into colonial legal understandings. This allowed courts to subsume cultural concepts unfamiliar to common law into existing legal precedent to determine culpability and administer convictions in alignment with colonial priorities. Motives of witchcraft were granted leniency because claims of "fear" resonated with colonial misunderstandings of witchcraft. Fear, then, became a legally legible emotional disturbance that afforded mitigation (commutation). Bridewealth disputes became sites for negotiating leniency because colonial actors could recognize the upset associated with property loss. This made bridewealth legally intelligible without becoming a sure defense against a murder conviction. In contrast, murders motivated by women's marital abandonment were interpreted as a loss of male control over wives that justified punitive intervention. Such murders were rarely granted mercy, as colonial authorities viewed the domestic sphere as central to the maintenance of "law and order" and deployed murder convictions as a form of deterrence. Across these cases, motives for homicide constituted the foundation of legal debates over whether male injuries were legally legible enough to mitigate the murder of women.

The first two cases of the homicide of women examined in this study were motivated by witchcraft. Both Morani's case from 1940 and Makau's from 1942 began as murder convictions that were later commuted to manslaughter following their appeal trials or gubernatorial intervention. Their commutation signified that homicide motivated by witchcraft accusations allowed for the most judicial leniency, at least in the early 1940s. The next two homicide cases addressed in this study were motivated by disputes over bridewealth. Rashid's case in 1928 ended with a murder conviction, while Mbuku's case in 1950 resulted in the commutation of the conviction to manslaughter. This inconsistency in convictions revealed that homicide motivated by bridewealth disputes was dependent upon extenuating circumstances and gubernatorial intervention. The final two cases analyzed in this study were homicides motivated by a woman's marital abandonment. Both Mutuku's case from 1949 and Samuel's case from 1964 concluded in murder convictions. Their convictions highlight the colonial courts' commitment to upholding justice for these deceased women when it aligned with the interests of the colonial administration. With that said, there were several files included within these cases that indicated due diligence on behalf of that state. Commissioners and police officers were consistently dispatched to investigate and uncover the true motives behind these homicides which, in some cases, helped to secure murder convictions.

Even in cases where justice was upheld for deceased women through convictions of murder, they did not necessarily affirm women's agency. Especially in murder trials involving marital abandonment, the deceased woman's character was subjected to intense scrutiny. African women who did not prioritize home life and refinement were subjected to colonial stereotypes that branded them as "purveyors of sin" and "immoral."²²⁴ In court, accused men invoked these classic

²²⁴ Iris Berger, "Domesticity and Modernization," in *Women in Twentieth-Century Africa* (Cambridge: Cambridge University Press, 2016), 46.

tropes of women's sexual immorality to undermine their agency and devalue their life. Accused men repeatedly spoke of their wives as "prostitutes," and one man attempted to avoid guilt altogether through claiming that his wife was most likely murdered by an "unsatisfied customer."²²⁵ Although colonial judges ultimately rejected these arguments in their final verdicts, the constant litigation over women's sexual activities reveals how women's moral worth remained central to debate within the courtroom. In this sense, "justice" for deceased women became more symbolic than emancipative, as it did not attempt to dismantle the patriarchal assumptions that made such gendered violence possible.

However, this symbolic justice was upheld by the presence of deceased women's voices within the trial itself. Through letters, previous legal disputes, and witness accounts, deceased women were rendered present within colonial courts. In all the cases—the two abandonment and one bridewealth—that resulted in murder convictions, women's voices were prominently present in the legal records. Their words clarified motive, revealed coercion, and undermined accused men's narratives of provocation. In this sense, deceased women were able to obtain justice from beyond the grave, demonstrating that even within institutions constrained by patriarchal assumptions, women's agency remained more powerful than men's grievances in shaping judicial outcomes.

In these cases, justice was not determined solely from within the judicial sphere, as judicial determinations of guilt were frequently recalibrated by gubernatorial intervention.²²⁶ The presence of administrative mercy exposed where women's deaths were considered politically negotiable. Leniency towards male perpetrators was most often granted when gendered violence did not

²²⁵ Supreme Court Trial, Nairobi, exhibit 7 (accused's statement to police on June 30, 1964), September 21–October 23, 1964, AC-1-5517, KNA, 27.

²²⁶ Hynd, "Fatal Families," 162.

threaten colonial governance's goals such as stabilizing male authority. In contrast, homicides motivated by marital abandonment presented a preference for deterrence through convictions of murder. Their outcomes reflected the colonial administration's goals to regulate the domestic lives of Africans to preserve order.

Finally, the inclusion of Samuel's trial from 1964 to 1965 underscores the persistence of colonial logics of gendered justice into the immediate postcolonial era. Despite this case occurring after Kenya's formal independence in December of 1963, continuities in penal codes, evidentiary standards, and gendered reasoning remained firmly in place. Colonial jurisprudence surrounding gendered justice was not temporally restrained to the colonial period, as independence did not dismantle colonial judicial approaches to femicide. Taken together, these cases reveal that colonial justice for women's homicide was conditional rather than universal, that motive functioned as a judicially productive category, and that women's lives were evaluated through sexual morality and evidentiary presence. While women's voices could aid in securing murder convictions, judicial authority remained vulnerable to gubernatorial override, and these gendered legal logics persisted into the immediate postcolonial period. Collectively, these cases underscore the necessity of historicizing femicide as a product of law, governance, and gendered power.

This study on the legal treatment of femicide in colonial Kenya advances a gendered legal analysis that contributes to African women's and criminal justice histories. By foregrounding femicide as a site for examining the logics of gendered justice, it moves beyond singular analytical frames such as witchcraft, honor killings, or domestic violence to trace how gendered homicide was adjudicated within a hybrid legal system. The "logics of gendered justice" offers an analytical framework that can be applied across temporal and regional settings to evaluate how legal environments treat cases of femicide. It enables comparative inquiry into how legal systems

evaluate gendered violence by adjudicating motive to determine punishment. In systems of legal hybridity, this framework recognizes that motives operated as a critical bridge between Indigenous and Islamic social rationalities and colonial judicial priorities. Through this framework, colonial legal documents become critical resources for the production of historical research on gendered violence in Africa. Other scholars have demonstrated how court documents uncover insights into domestic disputes between Africans, but they have yet to focus on the gender of the victims by utilizing the framework of femicide. Analyzing motives behind colonial murder convictions alongside the documented voices of African women generates new insights into both the structural forces that contributed to gendered violence and the lived experiences of those subjected to it.

This study was restricted in scope by the limitations of the archival record, but it underscores the need for further historical research on femicide as a category of legal and historical analysis. To pursue further research on femicide through a decolonial lens, scholars should examine approaches to gendered homicide found within African and Islamic legal systems as alternative frameworks to colonial legal models. This approach parallels the work David Otieno has done in his study of burial disputes in Kenya.²²⁷ Furthermore, the historical study of femicide should not be confined to legal documents alone. By turning to colonial institutions, oral testimonies, media discourses, and ritual archives, future historians can begin to analyze the extrajudicial influences shaping fatal gendered violence.

Sharon Otieno's murder in 2018 gained national and international attention because it was orchestrated by a Kenyan governor, Okoth Obado. Even with such notoriety, the Kenyan state was still slow to bring the case to trial. This lack of urgency in the obtaining justice for her murder has

²²⁷ See David Otieno Ngira, "Re-Examining Burial Disputes in Kenyan Courts through the Lenses of Legal Pluralism," *Oñati Socio-Legal Series* 8, no. 7 (2018): 1020–40. <https://doi.org/10.35295/osls.iisl/0000-0000-0000-0982>.

grave implications for a country that many argue is facing a femicide crisis. During my first trip to Kenya in January of 2024, I found myself amid growing public activism against the rising rates of femicide following the deaths of social media influencer, Starlet Wahu, and university student, Rita Waeni.²²⁸ In response, musicians released songs such as Sauti Sol's "By the River," while activists organized art exhibitions, like *Usikimiye* in August 2025, to raise awareness for the femicide emergency in contemporary Kenya. Through conversations with friends and acquaintances, alongside engagement with social media and public discourse, it became evident that contemporary discussions surrounding violence against women remain deeply shaped by a culture of victim-blaming and ambivalence toward gendered violence. These continuities underscore the broader implications of this study: that femicide must be historicized not simply as interpersonal violence, but as a phenomenon with legacies of gendered power within state and social institutions.

Reported statistics on the rates of femicide and gender-related homicide are primarily available from the last three decades, and they illustrate that rates of fatal violence against women have remained relatively consistent depending on the region and category of homicide examined.²²⁹ Existing reports consistently identify the African continent as experiencing some of the highest rates of femicide globally.²³⁰ Now more than ever, historicizing the legal and extralegal treatment of women's murder remains essential to understanding how law, governance, and

²²⁸ Wambui Mwaura and H. T. Jagiri, "They Were Allegedly Murdered by Their 'Partners.' Now Mothers of These Femicide Victims Seek Justice," *Minority Africa*, September 10, 2024, <https://minorityafrica.org/they-were-allegedly-murdered-by-their-partners-now-mothers-of-these-femicide-victims-seek-justice/>.

²²⁹ United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-Related Killing of Women and Girls* (Vienna: United Nations Office on Drugs and Crime, 2018), 25–27, 32, 34, 42–45, https://unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf. This source also contains a list of countries where femicide is treated as a criminal offence.

²³⁰ United Nations Office on Drugs and Crime and UN Women, *Femicides in 2024: Global Estimates of Intimate Partner/Family Member Femicides* (Vienna: United Nations Office on Drugs and Crime and UN Women, 2025), 7, <https://www.unwomen.org/sites/default/files/2025-11/femicides-in-2024-global-estimates-of-intimate-partner-family-member-femicides-en.pdf>.

society have contributed to the persistence of fatal gendered violence. Across Kenya, South Africa, Mexico, France, China, the United States, and beyond, women's rights activists continue to call for the formal recognition of femicide. If we are to imagine a world where extreme gendered violence is eliminated, we must confront the social and political environments that have allowed such violence to be normalized and reproduced.

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Appendix A

Six Main Court Cases

Collected from the Kenya National Archives (KNA), Nairobi

Case #1 (Witchcraft): Rex vs. “Morani”

File #	Yr(s)	Motive	Location	Final Verdict	Included Documentation
AXM1-8-65	1940	Witchcraft	Kisumu	Manslaughter w/ 7 years' imprisonment	Second-Class Magistrate deposition, Statement of Accused to the Second-Class magistrate, Supreme Court trial transcript, Supreme Court judgment, Prisoner Medical Report, Postmortem report, Letter from Chief Secretary to the District Commissioner of Kisii and Provincial Commissioner of Kisumu (prisoner's plea from Supreme Court trial), Letter from District Commissioner of Kisii to the Provincial Commissioner of Kisumu (discussion of provocation as mitigation), Letter from Supreme Court judge to Governor (accused appealed to E.A. Court of Appeals)

Case #2 (Witchcraft): Rex v. “Makau”

File #	Yr(s)	Motive	Location	Final Verdict	Included Documentation
AXM1-8-1376	1942	Witchcraft	Kitui	Manslaughter w/ 10 years' imprisonment	Second-Class Magistrate trial transcript, Statement of Accused to Second-Class magistrate, Letter from Second-Class magistrate to Supreme Court judge (copies of the proceedings & memorandum), Letter from the Supreme Court judge to the Second-Class magistrate (requesting personnel for court), Postmortem report, Supreme Court judgment

Case #3: Rex vs. “Rashid”

File #	Yr(s)	Motive	Location	Final Verdict	Included Documentation
AC-1-346	1928	Bridewealth	Kacheliba	Murder w/ a death sentence	Third-Class Magistrate abuse complaint transcript, Second-Class Magistrate murder trial transcript, Second-Class Magistrate charge sheet, Supreme Court judgment, Evidence List, Letter by Accused translated to English, Drawing of the Crime Scene, Memorandum of

					Appeal to the E.A. Court of Appeals, E.A. Court of Appeals Judgment
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Case #4 (Bridewealth): Rex v. “Mbuku”

File #	Yr(s)	Motive	Location	Final Verdict	Included Documentation
AXM1-8-414	1950-1951	Bridewealth	Nairobi	Manslaughter w/ 10 years' imprisonment	Supreme Court Transcript, Supreme Court Judgment, Prisoner Medical Report, Report from District Commissioner to the Executive Council (community character witnesses), Court of Appeals Judgment, Letter from Supreme Court judge to the Governor (arguing against commutation), Letter from Governor to Supreme Court judge (agreed with judge), Commutation Order from Governor to the Prison Superintendent (Nairobi)

Case #5 (Abandonment): Rex vs. “Mutuku”

File #	Yr(s)	Motive	Location	Final Verdict	Included Documentation
AXM1-8-344	1949	Marital Abandonment	Mombasa	Murder w/ a death sentence	Statement from the Accused to the District Commissioner of Mombasa, Postmortem Report, Report of Medical Officer, Second-Class Magistrate Court Transcript, Letter from Second-Class Magistrate to the Supreme Court, Supreme Court Trials Transcript, Supreme Court Judgment, E.A. Court of Appeals Judgment

Case #6 (Abandonment): Regina vs. “Samuel”

File #	Yr(s)	Motive	Location	Final Verdict	Included Documentation
AC-1-5517	1964–1965	Marital Abandonment	Nairobi	Murder w/ a death sentence	Appeal Request to the Supreme Court, Supreme Court Transcript, Supreme Court Judgment, List of Evidence, Letters from litigants, Incident Police Report, Evidence Report from the Government Chemist's Department, Memorandum of Appeal to the E.A. Court of Appeals, E.A. Court of Appeals Response (set trial date)

Appendix B

The Femicide Archive

Collected from the Kenya National Archives (KNA), Nairobi

	File #	Year	Motive	Final Verdict
1	AC-1-226	1923	Sexual Rejection (acquaintance)	Acquittal
2	AC-1-229	1924	Acquaintance Dispute	Acquittal
3	AC-1-255	1925	Domestic Dispute (spousal)	Murder w/ death sentence
4	AC-1-257	1925	Domestic Dispute (spousal)	Voluntary causing grievous hurt
5	AC-1-312	1927	Acquaintance Dispute	Murder w/ death sentence
6	AC-1-316	1927	Marital Abandonment	Murder w/ death sentence
7	AC-1-344	1928	Sexual Rejection (acquaintance)	Murder w/ death sentence
8	AC-1-346	1928	Bridewealth Dispute	Murder w/ death sentence
9	AG-52-396	1930	Acquaintance Dispute (drunkenness)	Acquittal
10	AXM1-8-64	1940	Domestic Dispute (spousal)	Murder w/ death sentence
11	AXM1-8-65	1940	Witchcraft	Manslaughter w/ 7 years' imprisonment
12	AXM1-8-68	1940	Marital Abandonment	Murder w/ death sentence
13	AXM1-8-76	1940	Domestic Dispute (familial)	Murder w/ death sentence
14	AXM1-8-80	1940	Acquaintance Dispute (interfered in a domestic dispute)	Manslaughter w/ 5 years' imprisonment
15	AXM1-8-1361	1941	Domestic Dispute (spousal)	Acquittal (Insanity)
16	AXM1-8-1376	1942	Witchcraft	Manslaughter w/ 10 years' imprisonment
17	AXM1-8-1385	1944	Domestic Dispute (bewitched)	Murder w/ containment in medical institution (deemed insane)
18	AXM1-8-1397	1944	Familial Dispute	Murder w/ imprisonment (accused was a minor)
19	AXM1-8-1398	1944	Domestic Dispute (spousal)	Murder (insanity)
20	AXM1-8-1417 & AXM1-8-228	1945-1946	Witchcraft	Acquittal (by Governor)
21	AXM1-8-249	1946	Domestic Dispute (spousal)	Murder w/ death sentence
22	AXM1-8-258	1946	Violent Robbery (acquaintance)	Murder w/ death sentence
23	AXM1-8-351	1949	Domestic Dispute (motiveless, claimed insanity)	Killing while insane w/ containment in mental institution
24	AXM1-8-344	1949	Marital Abandonment	Murder w/ death sentence
25	AXM1-8-354	1949	Domestic Dispute (disobedient wife)	Murder w/ death sentence
26	AXM1-8-359	1949	Sexual Rejection (acquaintance)	Murder w/ death sentence
27	AXM1-8-382	1950	Acquaintance Dispute (revenge)	Murder w/ death sentence
28	AXM1-8-384	1950	Sexual Rejection (acquaintance)	Acquittal (insufficient evidence)
29	AXM1-8-391	1950	Adultery (revenge)	Murder w/ death sentence

30	AXM1-8-414	1950-1951	Bridewealth Dispute	Manslaughter w/ 10 years' imprisonment
31	AXM1-8-410	1951	Adultery (jealousy)	Murder w/ death sentence
32	AXM1-8-418	1951	Bridewealth Dispute (jealousy)	Murder w/ death sentence
33	AXM1-8-347	1951-1952	Domestic Dispute (revenge on second wife)	Murder w/ clemency (old age)
34	AXM1-8-433	1952	Acquaintance Dispute (possession)	Murder w/ death sentence (accused was a minor)
35	AXM1-8-439	1952	Bridewealth Dispute (revenge)	Murder w/ death sentence
36	AXM1-8-497	1953	Gang violence	1 Conviction of Murder (2 perpetrators)
37	AXM1-8-562	1953	Adultery (cohabitation w/out official marriage union)	Manslaughter w/ 2 years' imprisonment
38	AXM1-8-482	1953	Gang violence (neighbor raid)	Murder w/ death sentence
39	AXM1-8-488	1953	Familial Dispute (motiveless)	Murder w/ death sentence
40	AXM1-8-975	1954	Sexual Rejection (acquaintance)	Manslaughter w/ 10 years' imprisonment
41	AXM1-8-1000	1954	Acquaintance Dispute (revenge)	Murder w/ death sentence
42	AXM1-8-1295	1955	Familial (accident due to misidentification of the victim)	Murder w/ death sentence
43	AC-1-5517	1964-1965	Marital Abandonment	Murder w/ death sentence
44	DP-18-3(c)	1969	Unknown motive (limited documentation)	Murder
45	DP-18-3(d)	1969	Domestic Dispute (spousal)	Murder w/ death sentence
46	DP-18-3(e)	1969	Domestic Dispute (disobedient wife)	Manslaughter (tbd)
47	DP-18-3(f)	1969	Domestic Dispute (monetary)	Murder w/ death sentence
48	DP-18-3(a)	1970	Domestic Dispute (spousal)	Murder w/ death sentence
49	DP-18-3(b)	1970	Familial Dispute (unknown motive)	Murder

Appendix C

Letters from Litigants

Collected from the Kenya National Archives (KNA), Nairobi

AC-1-346: Letter from Rashid; dated February 3, 1928

Supreme Court Exhibit 11 A:
I give you this story. All people who have married wives, better not to pay for them but live with them for nothing. Also, I Rashid, let you know as follows:– It is not better to beat a wife, you the remainders; because if you beat your wife, she will go to the D.C. and the D.C. would not ask anything but a warrant to send you to jail. When you are taken out from Jail and brought to the office, on and above your being sleeping in the jail for 15, 20, 27 or 29 days, when you come up to the D.C. will say “You are guilty” and if you attempt to answer he tells you “Shut up” keep quite: next thing he will say “Your case is over and you cannot get either wife or money” If you attempts to answer he tells you “if you speak, you will be imprisoned for a year”. Look at me, I have paid Shs. 280 & 8 and 3 goats but I was told to receive back Shs. 50/-. Then I felt bitterly and slaughtered them all. Now tell Bwana Mdogo (A.D.C.) to put lives in them and put lives in us. Therefore it is a matter of my money getting lost for nothing and without any reason, and a meaningless case made against me, so it has spoiled me heart very much. That is all. I am late Rashid deceased. I have died on account of my money Shs. 280/- and 8 and 3 goats.

AC-1-5517: Letter from Samuel to Mary; dated June 27, 1964

Exhibit 5(1): Swahili (original)	Exhibit 11: English²³¹ (original)
Kwa Bibi mpenzi Mary, Sasa upande wako mambo yakoje. Kwa nini hata nikitembea kwenu husemi na mimi. Hata baba na mama zangu wakiwa watakuja hapo kwenu Jumamosi ijao tarehe 4/7/64. Si ni vizuri kwako kinitembelea hata ikiwa un hazira. Kwa maana mambo yaweza kugeuka yakaenda kombo na hapo wewe au mimi atakumbuka mwingine. Je! Wataka utezi au nini.	To my beloved wife Mary, Now how are things on your side? Why even when I visit yours you do not speak with me. Even if my father and mother will come there to yours on Saturday, on the date 4.7.64. It is [would be nice] for you to visit me even if you have anger, Because matters may change and go badly and then either you or me will remember the other. Why. Do you want threats or what.

²³¹ This is a copy of the original English translation that was submitted as evidence. It acts as a literal rendering of Samuel’s words, so some phrasing is strange, but the meaning is still coherent.

Hata ukaniacha tafadhali usikae na roho mbaya. Mimi sina roho mbaya au hazira. Kwa binafsi Habari yangu in uhuru kwa upande wake sema na mimi. Kuazia hapo jana yanifayo yameisha kuwa mema. Leo Jumamosi sikuenda Kikuyu-ini kwa jambo Fulani kwa hivyo njoo hapa kwa mazungumzo kidogo. Tena rudisha burua hii kwa upesi.	Even if you depart me do not stay with a bad heart. I do not have a bad heart or anger. Personally, my thoughts have a freedom on his side speak with me. Since yesterday things have been well. Today, Saturday, I did not go to the Kikuyu countryside because of a certain reason therefore come here for a little discussion. Again, reply [to] this letter quickly.
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AC-1-5517: Letter from Mary to Samuel; dated N/A, 1964

Exhibit 6: Swahili (original)	Exhibit 12: English
Kwa Samuel, Wewe unahaya hata kidogo unafikiri mimi ni bibi yako [mistress wako] usirudi tena kunitumia Barua tena ulisema ati unahaja na mimi na ukubuke wewe na bibi yako [mistress wako]. Msipo nipa mimi mtoto wangu au wewe mwenyewe useme nini ilimla mtoto mimi sinahaja na wewe tena ujue wewe unafuraha sana siku ya Jumatano siwewe ulipelekea [mistress wako] mkate na soda bili pamoja na mchele na nyama au unafikili hayo yote sijui kila jambo hufalo mimi nali jua tu. Kwahiyo wewe mwenywe ulisema unahaja na mimi ukasema damu yako ikitakufaniife unahaja nayo juu ya [mistress wako].	To Samuel, You have no shame even a little you think I am your wife [your mistress] do not repeat again sending letters again you said that you did not want me and remember yourself and you wife [your mistress] unless you give me my child or you yourself say what killed the child I have no need of you any more remember that pleasure of you had on Wednesday didn't you send [your mistress] bread and two sodas together with rice and meat or you think that all I do not know Everything you do I know it.²³² Therefore you yourself said you did not want me you said your blood will die and until it dies it will only be in need of [your mistress].²³³

²³² Here, I use "[your mistress]" as a placeholder for the actual mistress's name.

²³³ The original court translation adhered closely to a literal rendering of Mary's wording. The letter appears to be written as a "stream of conscious" and need to be broken up to portray the author's intended meaning. Therefore, I worked with Munyao Kilolo to produce an English translation that preserved the meaning while remaining clear to English readers. The first paragraph is as follows: "You are not even a little ashamed thinking of me as your wife, [your mistress]. Do not try sending me letters again. You said that you did not want me and remember yourself and your wife, [your mistress]. If you don't give me my child or tell me what happened to my child, I do not have any need for you anymore. You know you were very happy on Wednesday, was it not you who took bread and two sodas together with rice and meat? Or do you think that I don't know? Everything you do, I just know. For this reason, you yourself said you do not have any need with me. You said if your blood (child) dies, that I should also die. You do not have need for us because of [your mistress]."

Basi ukichiki damu yako na mimi umechikia vilevile tena. wewe uliniabi [mistress wako] amenishinda sasa tabu gani unayo umeniona mimi sibibi yako [mistress wako] ndiyo wako tena una Watoto urudi ukasema nikitaka kuji nyonga juu ya [mistress wako] njiyonge. Sina mengi ilahayo usirudi kutuma barua kwangu tokea sasa koma tena mimi sina tabu hata kidogo. Hayo maneno unataka kuniambia sema kwa barua mimi siwezi kuongea na wewe.	Therefore if you are annoyed at your blood you are annoyed with me too again you told me that [your mistress] excels me now what trouble have you, you have found me not to be your wife [your mistress] is the one yours again you have children and return saying that if I want to hang myself because of [your mistress] I may hang.²³⁴ That should not return to send letter to me from now stop I myself have no trouble even a little. Those matters you want to tell me very much be letters I cannot speak with you.²³⁵
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AC-1-5517: Letter from Samuel to Mary; dated June 29, 1964

Exhibit 5(2): Swahili (original)	Exhibit 10: English²³⁶ (original)
Kwa bi Mary, Sina mengi lakini mimi najua wazi ati tarehe 8/6/64 siku ulikuwa Kikuyuni wakati tulitoka Thika hukuwa na hazira kusema kweli mama yako ndiye ambaye alikuambia usije kwangu tena. Bona husemi mwenywe ati hutaki mimi. Kwanini siku ya Ndoa—arusi ulikumbali mimi mbele ya Mungu. Tafadhali usicheza na dini yaketoliki tarehe 20/1/62 uliapa mbele ya kanisa nyumba ya Mungu mbele ya father na mashahidi (lists two names). Tafadhali sema wazi ati hutaki mimi bila kuambiwa na mama. Usifikiri ati ni rahisi kama unavyoambiwa. Mimi na hesabu siku tena. Nadhani kuna mengi ya kufanya. Haki mimi najua mengi. Lakini utajionea mambo gani nitafanya.	To Mrs. Mary, I do not have much but I know clearly that on 8/6/64 the day you were at Kikuyuni when we left Thika you were angry. To speak the truth your mother is the one who told you not to come to mine again. Why don't you say yourself that you do not want me. Why on the wedding day you accept me before God. Please do not play with the Catholic Religion on 20/1/62 you swore in church God's house before the father and the witness (lists two names). Please say plainly that you do not want me instead of being told by mother. Do not think it is as easy as you are told. I am only counting days. I suppose there if much to be done. True I know much. But you will see for yourself what things I shall do.

²³⁴ For reasons stated in the previous footnote, this is my translation of the second paragraph: "You are not choosing your own blood, and you told me [your mistress] is better than me. So, now, what is the problem that you have? You've seen me, I'm not your wife Muchiku. Yes, you have children, and you tell me again that if I want to commit suicide because of [your mistress], I should kill myself."

²³⁵ For reasons previously stated, here is my translation of the third paragraph: "I don't have a lot to say, don't send me your letter from now on, I don't have even a little trouble. Those words you want to say to me, say them through a letter, because I won't speak with you."

²³⁶ This is a copy of the original English translation that was submitted as evidence. It acts as a literal rendering of Samuel's words, so some phrasing is strange, but the meaning is still coherent.

Ulisema ati Baba yako anakutafutia kazi mnasahau huko kwenu hakuna mali yangu siyo, usifikiri ati serikali haiko. Mambo mawili wewe kazi hutaandikwa. Kuolewa na Bwana mwingine hutaolewa kama mimi niko uhai. Labda nchi ambayo haijulikani lakini sina Nairobi. Vile ambavyo nitafanya hujui kwako. “Sasa natoa nafasi ya mwisho useme ati hutaki Njoroge halafu uone nitafanya”. Mimi sijui mwanamke mwingine isipokuwa wewe Mary w/o Samuel. Kifo cha mtoto ni juu ya Mungu. Sister wa Mission alinipa barua juu ya ugonjwa wa huo mtoto, kwa hivyo nayo ni juu ya Mungu. Kwa jina la Mwenyazi Mungu wewe utarudi kwa nyumba yangu, hata ukanika namna gani. Sina hazira na yeyote kama nina Mungu anione.	You said that your father is seeking employment for you. You forget that at yours there is no property of mine isn't it. Do not think that the Government is not there. Two things you work will never be employed. To be married by another husband you will never be married if I be alive. Perhaps in a country which is unknown but no Nairobi. What I will do to you, you do not know. Now I give the last chance you declare that you do not want Njoroge then you see I shall do. I do not know any other woman except you Mary w/o Samuel. The child's death is God's affair. The Missionary Sister wrote me a letter about the child's illness, so that is all God's affairs. In the name of Almighty God you will return to me house, even if you jump in any manner. I have no anger with you whatever if I have God see me.
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