

# A Kenyan lawyer takes on a coldly familiar case



Carolyn Cole / Los Angeles Times

Lawyer Mbuthi Gathenji was enlisted by the family of Father John Kaiser and the Roman Catholic Church to reexamine the circumstances of Kaiser's death.

## **Mbuthi Gathenji focuses on the pieces that don't fit in the case of Father John Kaiser's violent death.**

By Christopher Goffard, Last of Three Parts  
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**Reporting from Nairobi, Kenya** -- The deeper the lawyer probed, the more the case resembled a hall of mirrors, a maze of ambiguous characters and unknowable motives. There were hints of conspiracies, trap doors, scaffoldings of fact that vaporized into fiction. The trail was nearly three years old by the spring of 2003, when the lawyer's investigator headed deep into the countryside, working at night for protection, searching for witnesses.

The goal: to upend what had become the official narrative of Father John Kaiser's death. Embraced by the FBI and the Kenyan government, the story held that the 67-year-old American missionary had turned his long-barreled shotgun on himself along a dark road

50 miles from Nairobi.

The lawyer, Mbuthi Gathenji, had been enlisted by Kaiser's family and the Catholic Church to reexamine the case. He was in his early 50s, with graying hair and an air of wary circumspection informed by decades on the wrong side of a police state.

Poring over the FBI report, he saw what he considered a patchwork of bad inferences and tunnel-vision analysis, an eagerness to distort the meaning of Kaiser's behavior to fit its conclusion. As the agency portrayed it, Kaiser's conduct in his last days -- bouts of tears, erratic movements, displays of anxiety and fear -- reflected a mental unraveling.

To Gathenji, it seemed the behavior of a man who believed with good reason that killers were hunting him. One of the country's loudest dissidents, Kaiser had called for President Daniel Arap Moi to be tried at The Hague for inciting ethnic carnage and had accused a top minister of rape. He had ignored his church's pleas to leave the country and had received repeated death threats.

Despite his history of manic-depression, nothing in his final letters suggested derangement. He had never been known to attempt suicide. He left no note.

As Gathenji saw it, something crucial was missing from the scene where Kaiser's body was discovered: the pellets and wadding that his shotgun would have discharged when he was killed. They weren't found in the remains of his cranium or, despite searches over a wide radius, in the surrounding dirt and shrubs.

To many Kenyans, the case had a coldly familiar feel. It looked like a classic state-sanctioned hit, with a venerable foreign law enforcement agency called in to lend legitimacy to the investigation. It brought to mind Robert Ouko, the Kenyan foreign minister who attacked high-level corruption and turned up in a ravine in 1990, a gun beside his charred, mutilated body. Police called it suicide. To quell public clamor, Moi invited New Scotland Yard to investigate, then curtailed the probe when it pointed to members of his inner circle.

The case felt familiar to Gathenji in another, more personal way. His father had been the victim of an unpunished, politically charged slaying in September 1969, dragged from his home by fellow Kikuyus for refusing to swear an oath of tribal loyalty. Gathenji, 20 at the time, believed the attack was sanctioned by elements of the Kikuyu-dominated government of Kenya's first president, Jomo Kenyatta.

"We knew that nothing would be done," Gathenji said. "That is exactly why I wanted to be a lawyer. I wanted to do something to find out the truth."

He represented Kenyans swept up in mass arrests and championed refugees uprooted in ethnic violence. Police once raided Gathenji's house and imprisoned him for five days. For years, he had watched his rearview mirror for the white cars of the secret police.

His legal battles and pro-democracy work had brought him into contact with Kaiser. He remembered the priest dropping by his office, always on a crusade, always in dusty shoes.

Now, studying photographs of the crime scene, Gathenji noticed how carefully a set of

bedding had been arranged on the ground near Kaiser's body, as if the priest had been planning to sleep there. The neatness of the bedding seemed to reflect a Kenyan's conception of a punctilious Englishman. It didn't look like the handiwork of the priest he knew as "essentially a cowboy."

"It was arranged by someone with very foreign ideas about Father Kaiser," he said.

Preparing for the long-delayed inquest in the death, he unearthed a piece of evidence that never made the FBI's report. It was a firearms registry kept by rangers at the Masai Mara Game Reserve, an hour's drive from Kaiser's parish in the country's remote southwest corner.

The registry showed that a warden had checked out a big-game rifle on Aug. 15, 2000 -- eight days before the priest's death -- that was never returned. The warden, an illiterate Masai with two wives, was an in-law and fellow tribesman of Julius Sunkuli, the Cabinet minister the priest had accused of rape and corruption.

A source too frightened to go on the record told Gathenji's investigator that on the morning of Aug. 21, when Kaiser left his parish for his final drive to Nairobi, he had narrowly missed an ambush laid by three park wardens.

In the summer of 2003, as the inquest began in a courthouse outside Nairobi, the priest's older brother left his home in Santa Rosa, Calif., and boarded a flight to Kenya. Francis Kaiser, 72, would be among the first to testify.

The brothers had grown up on a dirt farm in Ottertail County, Minn., wandering the woods together and sleeping in the same bed. Francis remembered his brother as a "totally fearless" boy who did not hesitate to climb a windmill or plunge into a frozen pond to retrieve ducks they'd shot.

In a way, each brother had led the life the other had imagined for himself. John was the priest Francis thought he might be. Francis had the "good wife and cabinful of kids" John once spoke of wanting.

Francis thought of his brother as the John Wayne of priests, a cowboy of the cloth who possessed a certainty of the afterlife: "He didn't have the fear of death that the normal person has."

From the witness box, Francis insisted that suicide made little sense. His brother's shotgun had two barrels, but when it was found near his body, only the left one contained a spent shell. That was the barrel activated by squeezing the rear trigger. The right barrel, with the easier-to-reach front trigger, was empty, even though the priest had a live 12-gauge shell in the breast pocket of his jacket.

He knew his brother's habits with firearms. If he had two shells, Francis reasoned, he would have loaded both barrels, so he had a chance to fire twice. And if by some chance he had time to load just one, the shell would go in the right. Why load only the left?

"This was abnormal not only for John, but for anybody using the shotgun," he told the court.

Francis had brought the last letter he received from his brother. It was dated Aug. 17, 2000, six days before his death, and did not seem to reflect suicidal despair.

"I'm sitting on a veranda watching the world turn green again," the priest had written. "We have had a rather severe drought and the grass gone brown and short and cattle hungry. Then a great blessing and two inches of rain in the past two days so the birds are singing and lots of cows were dancing in the rain."

The letter reflected an aging man soberly confronting his mortality, wondering which of his family members "will be the first to finish it up here below." He wrote, "But at least I hope we can all meet again and have a fishing trip up in the border waters of Northern Minnesota, canoe country."

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Nothing embodied the case's shifting, indecipherable quality more than a gaunt, soft-spoken young Masai named Francis Kantai. He had been Kaiser's close companion, a live-in catechist who served as a cultural bridge to the nomadic cattle herders of Masailand.

To puzzle out his ultimate loyalties, however, was to enter a mare's-nest. Over and over, people told Kaiser that Kantai could not be trusted. They suspected that he was a spy for Sunkuli. Those suspicions were stoked when, according to the parish housekeeper, Kantai let Sunkuli's men into the parish house, where the priest kept his papers.

Fanning suspicions further was Kantai's admission that he had led Sunkuli's men to a safe house where two women who had accused Sunkuli of rape were hiding. Kantai insisted that the men had held him at gunpoint, and that among them was a secret police agent named Ebu who had hounded him for years over Kaiser's activities.

Why did Kaiser, who was so wary of his enemies, keep Kantai so close? Did he fear pushing a man with intimate knowledge of his habits deeper into Sunkuli's arms? There was a further complication in their relationship: One of Kaiser's cousins had fallen for Kantai during an extended visit to the parish in 2000. They were married, and Kantai was soon to travel to Nebraska to live with her. They had a baby son named after the priest.

After Kaiser's death, Kantai told investigators that Sunkuli had once urged him to poison the priest. But at the inquest, he said, "I wish to confess to court that I lied." He had been angry with Sunkuli, he explained. Believing him responsible for Kaiser's death, he made up the story.

And he offered another story, one he claimed he had forgotten in previous interviews. Not long before Kaiser's death, he said, he came upon Kaiser watching a video of a priest shooting himself. Kaiser seemed fixated by the spectacle, replaying it over and over.

Kantai did not know the video's title, and it could not be found. Gathenji believed it a fabrication.

Gathenji confronted Kantai with an informant's allegation: that he had tried to lure the priest into an ambush in the Masai Mara reserve. To the lawyer, Kantai looked like a man in anguish, about to surrender to tears.

No, Kantai said. He loved the priest. "He was like a father. I had not thought of life without him. I felt as if some part of me had left me."

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Zeroing in on what had happened in the Masai Mara, Gathenji summoned Anne Sawoyo, one of the two women who had accused Sunkuli of rape. She said that in July 2000, a month before his death, Kaiser tracked her down at an isolated lodge at the game reserve after learning that Sunkuli's men were holding her captive there.

The priest hoped to smuggle her out in his truck, but she was too afraid, and he left without her. Later that day, she said, she overheard Samuel Kortom, the senior warden who had checked out the rifle that went missing, discuss the priest's visit with another warden, saying, "He is lucky -- today would have been his day."

It was "an open secret" at the lodge, she said, that rangers planned to kill Kaiser and plant a dead animal beside him so it would appear that he had met his death as a poacher. Douglas Sikawa, a senior warden, confirmed that there were rumors afloat in the Mara that three rangers loyal to Sunkuli were plotting an ambush.

How did it add up? Kaiser's body was found more than 100 miles east of that area. To Gathenji, the evidence suggested that multiple murder plots had been in play.

Gathenji tried to find Florence Mpayei, Sunkuli's other accuser. A women's rights activist said Mpayei had called her from Sunkuli's house in Nairobi, not long before the priest's death, to relay that Sunkuli's men were talking about Kaiser and seemed to be planning something. That made Mpayei a potentially explosive witness, perhaps the key to the whole case, but Gathenji and his investigator could not find her.

One by one, the rangers walked to the witness box and denied everything. Finally, Sunkuli entered, his stout frame filling out a sharp suit. He insisted

Gathenji asked when he had learned of Kaiser's death. Sunkuli said it was at 10 that morning, about the time everyone else did.

Gathenji responded, "You knew of the death at 6 a.m. because you were involved in the arrangement."

"That is ridiculous," Sunkuli said.

he had no motive to kill the priest. He did not even have a grudge against him. Yes, he had recently lost his parliamentary seat, but he could always run again. Still, Sunkuli acknowledged that he had been worried enough about the priest's role in the rape charges to complain to Kaiser's bishop about it.

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More than three years had passed since the inquest began, and in early 2007 Gathenji wanted to put the FBI on the stand. He would ask the agents about the leads they had failed to pursue or had dismissed as irrelevant, the ones that led to the secret police, to the Mara rangers, to Kantai and Sunkuli.

He would ask them to acknowledge a conflict between their avowed aim to discover the truth and their wish to stay on friendly terms with the Kenyan government. Even as agents collaborated with Kenyan police on this case, after all, the FBI was depending on its Kenyan counterparts to prosecute what it regarded as its most important case: the 1998 terrorist bombing of the U.S. Embassy in Nairobi.

He would ask why they ignored an unexplained thumbprint of Kaiser's blood on the door of his truck. He would ask how they had concluded that he died at the spot where his body was found.

In a letter, the U.S. Embassy said the government "fully supports" the FBI's presence at the inquest, promising that agents would be available in Nairobi on March 5. The FBI missed the date, citing the difficulty of getting agents who were scattered on different assignments to Kenya at the same time.

Later, FBI agent Bill Corbett offered another explanation, one the court said it never received. He said the FBI planned to attend until it became clear that Kaiser's family would not release his psychiatric records. Without them, Corbett said, the FBI "would be handcuffed and not be able to tell the whole story."

A new date was set; the FBI did not appear. And another; still the FBI did not show.

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In Gathenji's mind, there were two plausible theories of how Kaiser met his death. Someone might have lured him to that dark road for an ambush. Perhaps he'd received a call -- someone pleading for help, playing on his gallantry -- that drew him from the safety of his bishop's house near Nairobi, where he had planned to sleep that night. But he'd told no one about it.

Or what if the priest had been captured or killed at the bishop's house? That would mean the security guard who reported seeing him leave in his truck -- supposedly one of the last people to have seen Kaiser alive -- was lying. The guard could not be found to question: He had vanished after Kaiser's death.

By this theory, Kaiser had never visited the remote homestead where villagers said they saw him standing on a knoll shortly before his death. Nor was it Kaiser who appeared that same night at a gas station in Naivasha, near where his body was found. Had that man been a double, a plant meant to conceal the fact that Kaiser had already been killed elsewhere?

One of the witnesses who placed Kaiser at the gas station was a warden at the local prison, but a pump attendant who knew him insisted that the warden had not been there that night.

"Someone was desperate to make sure Kaiser was put in Naivasha," Gathenji said. "That shows a very elaborate plan."

The warden could not be questioned either. He was dead, reportedly of a heart attack. So was an eminent Kenyan pathologist, killed in a car wreck before he could testify on his finding that Kaiser's gunshot wound pointed to murder. Dead, too, under vague circumstances, was Ebu, the special police agent said to have been following Kaiser.

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Seven years to the month after the priest's death, on Aug. 1, 2007, Gathenji sat in the crowded courtroom to hear Magistrate Maureen Odero read her findings. She was adamant: It was murder.

Pointing to the absence of shotgun pellets or gunpowder residue on his hands, she determined that Kaiser had been killed elsewhere and placed beside the dark road. If he had died there, she reasoned, there would have been more blood at the scene, and the recovered brain matter should have been embedded with more dirt, grass and twigs.

Given that Kaiser's shotgun was 3 feet long, she found it a "physical impossibility" that an arthritic 67-year-old man could have reached the trigger with the muzzle placed behind his ear. It struck her as more plausible that he was forced to his knees and shot from behind.

As for the FBI report, she declared it "superficial" and "seriously flawed." Noting that the agency had failed to appear for the inquest, she said, "This court can only conclude the FBI did not consider their report one worth defending."

Neither the FBI nor the Kenyan police had supplied a ballistics report, which she described as "a crucial missing link." Without it, there was no proof that the priest's shotgun had killed him, nor even the "pretense at any serious or meaningful investigations."

She said there was no evidence implicating Sunkuli in the killing. But she was troubled by the "evasive and contradictory" testimony of Kantai, and she called for deeper investigation of him and of the Mara rangers.

That Kaiser was murdered, she concluded, was not a mystery. "The only mystery is why the police failed to investigate this matter with the seriousness and diligence that it deserved."

Back at his office, Gathenji fired an e-mail to Francis Kaiser: We won.

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The reinvestigation demanded by Odero has been underway for more than a year, but there have been no arrests, and many who championed the inquest don't anticipate any.

"I expect the actual killers are probably dead," said Kaiser's sister, Carolita Mahoney.

Nor did it seem likely that Moi would be called to account, either for Kaiser's death or for the carnage that attended his 24 years as president. In 2002, voters swept his party from power, and he retired to his vast estates as one of Africa's richest men.

For the Kaiser family, the removal of the suicide verdict might have to be enough. Said Mary Mahoney Weaver, the priest's niece: "We feel vindicated. John's name is no longer marred."

The ruling did nothing, however, to budge the FBI agents who handled the case. Corbett called the magistrate's reasoning "fanciful" and maintained that untreated manic-depression, not an assassin, was the culprit.

"Ultimately, he died of a disease," the FBI agent said. "It's not something that everyone is comfortable talking about."

The inquest did little to untangle the psychological mysteries at the heart of the case.

"I always got the sense that John Kaiser was looking for martyrdom at a deep unconscious level," said Father Tom Keane, who lived with him in the year before he died. "John Kaiser kind of wanted to go with a bang."

Paul Boyle, one of the last priests to see Kaiser alive, at first thought suicide a real possibility. Looking into Kaiser's eyes, he had seen the despair of a man hunted and tormented beyond endurance. With the magistrate's ruling, Boyle had to reconsider. But there were riddles that taunted, such as: In an ambush, why didn't Kaiser, the former paratrooper, use his shotgun to defend himself?

Boyle recalled a night long ago in the Masai Mara when Kaiser leaned out the door of his moving truck and shot an impala in the distant bush. He thought about his final moments. He considered the scenarios.

"He's faced with the murderers, and he's got a choice. Kaiser has the gun. No one can shoot like Kaiser."

But ending the life of another man -- or several of them -- might have broken him. "Did he say, 'They've come to do what they've come to do?' Is that suicide? I don't know. It could be martyrdom."

He could see him handing over his shotgun and sinking to his knees in the darkness.

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Even to those he baptized, to those who understood the nature of his vows, there remained something bewildering about the life he chose. In the far-flung Kenyan parishes he had served over 36 years, big families were a given, childlessness a calamity, and here was a man who would leave no offspring, no link to the earth walking upright when he left it. His legacy would be measured in other ways.

Wangari Maathai, the first African woman to be awarded the Nobel Peace Prize and a

pioneer of Kenya's pro-democracy movement, said Kaiser represented "the people's voice in an era when ordinary people did not have a voice."

His importance grew after his death, she said, when he became a byword for the Moi regime's ruthlessness. The ditch where Kaiser's body was found became not just a memorial site but a place where the opposition mobilized. In the long campaign to oust Moi's government, she said, "he became a very powerful symbol."

His battle on behalf of Sunkuli's accusers was another element of his legacy. In a country where rape went widely unpunished and the rights of poor women were scant, the fact that a powerful minister was summoned to court to answer the charges represented a crack in a culture of impunity, even if Sunkuli ultimately avoided prosecution.

There were other measures, and one could be found in a story Francis Kaiser told.

When he and his wife went to Kenya in September 2003 for the inquest, they attended a Mass in his brother's honor in Nyangusu, a western town where the priest had spent many years. Francis was asked to bless the crowd.

Afterward, a family brought their baby for him to hold, and the child was named John Kaiser. Francis learned that the church was full of young boys -- infants and toddlers and kids already running -- who had been named after his brother.

It was the same, he found, in village after village. There were hundreds across the countryside, maybe more.

His brother had disappeared into the red soil, perhaps along with the truth about his death, but you could travel anywhere now and find John Kaiser.

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