



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. 5 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

KENNETH KIPROTICH LANGAT.....ACCUSED

JUDGMENT

1. The accused person in this case, KENNETH KIPROTICH LANGAT is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the charge are that on 11/4/2018 at MERIGI location, MENET Sub-location within BOMET County, the accused person murdered COSMAS KIPYEGON KITUR.
3. The accused person pleaded not guilty to the charge. The prosecution called a total of eight witnesses.
4. The prosecution evidence in summary was that PW1 STANLEY KIRUI said that on 11/4/2018 at 1PM, he had gone to meet the brother of the deceased and while on the way he met the deceased and started talking with him.
5. PW1 said the accused person in this case came and found him talking to the deceased. The accused passed him and did not greet him. He went and stabbed the deceased with a knife on the chest and when PW1 asked him what the matter was, the accused also stabbed PW1 on the back. PW1 ran away and called Christopher, the brother of the deceased. PW1 said he was taken to Longisa for treatment and he was referred to Tenwek Hospital where he was treated and he went home. PW1 said in cross-examination that the accused person had been following them prior to the attack.
6. PW2, CHRISTOPHER KITUR, a brother to the deceased said on 11/4/2018 at about 5p.m he was at his house with his wife and children when PW1, STANLEY KIRUI, went and told him the deceased had been stabbed by the accused person. PW1 told him he had also been stabbed. They went to the scene where PW2 saw the deceased lying down with stab wounds on the stomach and leg. PW2 took the deceased to Longisa and they were referred to Tenwek where the deceased died around 2a.m the same day.
7. PW3 WILLIAM ARAP NGENO the father of the deceased and PW2 said on the material day, PW2 called him and told him the deceased had been stabbed. He said he arranged for transport and the deceased was taken to Longisa and later to Tenwek where he died. PW3 said on 17/4/2018 he identified the body of the deceased for postmortem.
8. PW5 DR. RONALD KIBET did the postmortem on 17/4/2018 at 1.30p.m at Tenwek Hospital. He said the body had stab wounds on the left side of the chest and on the leg. He formed the opinion that the cause of death was massive hemorrhage secondary to stab wound. He produced the postmortem report as an Exhibit in this case.
9. PW5 RICHARD KIMUTAI who is a Government Analyst based at the Government Chemist at Kisumu said the following samples from No.11054 P. C MUTHUSI VICTORIA of DCIO Bomet;
 1. Blood sample from the deceased marked "A"
 2. Blood sample of the accused's clothes marked "B"
 3. Blood stained murder weapon marked "C"
 4. Blood sample from the accused marked "D"
10. PW5 was asked to examine the samples and determine their genetic relationship. He found that DNA profiles generated by the blood on

the accused person's clothes (marked "B") and the murder weapon (marked "C") matched with DNA profile of the blood of the deceased (marked "A") but had no DNA genetic relationship with the accused person's blood (marked "D") DNA profile.

11. PW6 No.789884 SERGEANT RONALD MOMANYI investigated this case while PW7 No.61187 CPL HENRY KIBOMA took pictures of the body which he produced as Exhibits in case. PW 8 No.110544 VICTORIA MUTHUSI took the samples to the Government Analyst.

12. The court found that the accused person had a case to answer and placed him on his defence. The accused person said on 11/4/2018 he woke up early and went to the farm. He said at 2.30p.m a vehicle came around and he loaded vegetables.

13. The accused said he went home at 5p.m and his children asked him for money for sugar and other items. His wife had gone to the posho mill. He said it had rained that day and he told his children not to come outside.

14. He said the deceased and PW1 arrived at his home and when he greeted them they refused to answer and PW1 told him they wanted to leave with his children. He told them not to take the children and he said he would call the area chief to discuss the issue.

15. The accused person said STANLEY hit him on the head with a club and he fell down. He said the deceased got hold of him and strangled him with a shirt and Stanley got hold of a knife and wanted to stab him.

16. The accused person said he shielded himself with the deceased and Stanley stabbed the deceased and left him with the deceased. The deceased walked away and sat down.

17. The accused person said he went and washed his face where he had been hit. His wife came from the posho mill and he told her not to leave the scene. He said the chief came with the brother of the deceased and they found him asleep. He said he was arrested and later taken to Longisa and then to Bomet. He does not know what happened to his children.

18. I have considered the evidence on record together with submissions filed by the parties. I find that it is the duty of the prosecution to prove the charges the accused person is facing and the standard of prove is beyond reasonable doubt.

19. The accused is charged with the offence of murder which is defined under section 203 of the Penal Code thus:

"any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder".

"Section 206 of the Penal Code provides for malice aforethought thus:- Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:-

(a) an intention to cause the death of or to do grievous harm to an person, whether that person, is the person actually killed or not;

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

(c) An intent to commit a felony,

(d)

20. The essential ingredients of the offence of murder required to be proved by the prosecution against the accused stands as follows:

a. **The death of the deceased.**

b. **That the death of the deceased was unlawful.**

c. **That in causing death the accused had malice aforethought.**

d. **That it was the accused who caused the death of the deceased.**

21. In the current case, I find that all the ingredients of murder have been proved to the required standard which is beyond reasonable doubt. PW1 witnessed the incident which happened in broad daylight at 1PM. There is evidence that the accused person accosted the deceased and fatally wounded him with a knife.

22. The Doctor who did the postmortem confirmed that the cause of death was excessive bleeding secondary to a stab wound.

23. In the case of **Joseph Kimani Njau V Republic [2014] eKLR** the Court of Appeal stated as follows:-

"In all criminal trials, both the actus reus and the mens rea are required for the offence charged; they must be proved by the

prosecution beyond reasonable doubt. The trial court is under a duty to ensure that before any conviction is entered, both the actus reus and mens rea have been proved to the required standard.

22.The attack was so vicious that the deceased died of massive hemorrhage secondary to stab wounds. The Accused person armed himself with a knife and intentionally inflicted fatal injuries on the deceased. There is evidence that the accused person had been following PW1 and the deceased prior to the attack and PW1 did not know why. There is therefore evidence that in causing death the accused had malice aforethought as it was something he had premeditated.

23.In his defence, the accused person said he had a fight with PW1 and that he shielded himself with the deceased and it was PW1 who stabbed the deceased.

24.I find that there is evidence that the accused person stabbed the deceased and when PW1 asked what the matter was, the accused person also stabbed PW1 on the back.

25.I find that there is evidence which placed the accused person at the scene of the crime. The evidence of the Government Analyst also confirmed that the clothes of the accused person were stained with blood which matched the DNA profile of the deceased person's blood group.

26.I find that the prosecution has proved the guilt of the accused person to the required standard. The accused person's defence that it was the deceased who attacked him is not true since there is no evidence that the accused person sustained any injuries.

27.I find that the accused person's defence is a made up story which does not make sense. If he was attacked by two people he would have sustained injuries.

28.I find that the prosecution has proved the guilt of the accused person to the required standard and I accordingly convict the accused person as charged.

Delivered, dated and signed at Bomet this 3rd day of August 2020.

A. N. ONGERI

JUDGE