



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 17 OF 2010

REPUBLIC.....APPELLANT

VERSUS

CHARLES CHERUIYOT MAIYO RESPONDENT

RULING

CHARLES CHERUIYOT ROTICH is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on the 24th day of March, 2010 at around 1300 hours at Simba Hills village, in Uasin Gishu District, within the Rift Valley province, the accused murdered *Cornelius Rotich Limo*.

The prosecution case is that *John Kipchumba Rono*, the PW-2 in this case went to school to pay school fees on 24th March 2010 and returned home at Simba Hills, Moiben at 1.00 p.m. Upon his return home he heard screams emanating from the neighbouring home of *Cornelius Rotich*, the deceased in this case.

He rushed there and found two of deceased's two children namely *K* and *M*. He asked them what had happened and they told him their father had died. He was referred to the kitchen where the body was. He got into the kitchen and found the body lying down. He touched it and felt it cold. He called PW-3 who is a son of the deceased who operates a Boda boda. At the time PW-3 was at Karandile in Moiben, where he had ferried a customer. While there PW-2 told him that the deceased had been killed by *Charles Cheruiyot*. He was as well told that the assailant had fled towards Kapenes. PW-3 rushed home where he found a crowd of people, among them PW-2. He, together with others present, reported the case at Moiben police station. The police went and collected the body.

PW-5 received the report at Moiben Police station at 7.30 p.m. It was made by *James Mutei* and *Rotich*. They reported that the deceased collided with his son *Charles Cheruiyot Maiyo* and was killed. PW-5, together with another officers namely *Vincent Muckoiyit*, visited the scene. The body was in the kitchen and there was no sign of struggle. They took the body to Iten District Hospital.

On 25/3/2010 at about 4.50 p.m PW-6 was at Langas police station. The accused went there and made a report that he had been chased away by his father with a panga at Moiben after asking him for school fees. While the accused was still there, his mother entered and reported that she had received a report that the accused had killed his father at Moiben. The said mother had separated from the deceased and was living at Langas. The accused was then arrested by PW-6. The OCS Moiben confirmed the report and stated that they were looking for the suspect. Moiben police officers went for the accused the following day.

On 29th March, 2010, PW-1 who is a brother to the deceased identified the body for post mortem. The post mortem was conducted by *Dr. Ondieki* who filled the post mortem report. The same was produced in court by PW-4. It shows that the deceased had blood around the nose. There was no evidence of external injury. Respiratory system showed massive blood around the chest. Other systems were normal. It was opined that he died out of massive bleeding in the chest (massive haemothorax).

The accused was then charged with the present offence.

In determining whether a prima facie case is established against the accused person, the available evidence must be weighed in line with the ingredients for the offence of murder which are:-

1. The fact of death of the deceased.
2. The cause of death; proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person; and
3. Proof that the said unlawful or omission was committed with malice aforethought.

The issue on death of the deceased is not in dispute. All prosecution witnesses were firm that he died on 24th March 2010. What, however, is in dispute is how he met his death. PW-3 said that he was told by PW-2 that he was killed by the accused. However PW-2 did not disclose so in his evidence. He said when he heard screams and rushed to the scene he found two children, K and M who said their father had died. There is no evidence that they told him how he had died or the cause of his death. He disclosed of no suspect. The two children were not called as witnesses. It is therefore doubtful that PW-2 told PW-3 of the suspect. Even if he did, the same amounts to hearsay. The only evidence which raises suspicion against the accused is that on 25th March 2010 at 4.50 p.m he went to Langas police station and reported to PW-6 that the father chased him with a panga at Moiben after asking for school fees. However, it is not clear when this alleged incident happened. Prosecution witnesses who saw the body states it had no visible physical injury. The post mortem report confirmed the same. The scene had no evidence of struggle or scuffle. The post mortem report shows he died of massive haemothorax. The report does not show what may have caused or triggered it. To my understanding, it is a major injury to the chest caused by a blunt force or penetrating trauma. It can happen when the chest experiences a sudden and intense impact. Examples of such causes are falling hard on the front of the body causing injury to the chest or getting involved in a Road Traffic Accident. If one is hit hard on the chest with a blunt object the same can be occasioned. Penetrating chest trauma as would result from a stab or chest surgery would cause it. Much less commonly it can be as a result of complication of disease.

In my own view, if the cause is an external trauma, most likely than not there would be signs of it on the chest. Such was noticeably missing on the chest of the deceased. It therefore becomes hard to overrule the cause of a rare result of complication of diseases.

It is therefore evident that the prosecution case is in want of proof that the deceased met his death as a result of unlawful act or omission on the part of the accused person. The evidence does not link the accused to the death of the deceased. For the reason I do find that the prosecution has failed to establish a prima facie case against him and is accordingly acquitted of the offence under *Section 210* of the *Criminal Procedure Code*.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 26th of March, 2019.

In the presence of:-

- (1) Mr. Okara for the accused
- (2) Ms. Mumu for state /prosecutor
- (3) Mr. Mwelem- Court Assistant