



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL CASE NO. 89 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JULIUS KIMOSOP KORIR.....ACCUSED**

**JUDGMENT**

1. **JULIUS KIMOSOP KIPKORIR** (accused) was jointly charged with **PETER KIMUTAI CHEPASKWONY** (2<sup>nd</sup> accused) for the offence of murder Contrary to Section 203 as read with 204 of the Penal code.

However the 2<sup>nd</sup> accused was converted to a prosecution witness and the charge against him was withdrawn. He was thus discharged. The charge against the accused is that on 4<sup>th</sup> December 2012 at **SANGURURU** Sub-Location within **ELGEYO-MARAKWET** murdered **TITUS KIPRONO KOSGEI**.

He denied the charge.

2. **PETER KIMUTAI CHEBASKWONY** (PW1) was at his home in **KILIMA** village on 4<sup>th</sup> December 2012 at about 7.30pm, in the company of his younger wife **ANNE KIMOSOP**, his brother in-law **JULIUS KIMOSOP** was seated outside their house, just under the roof, in the company of **STEVEN KIPRONO** – drinking alcohol. PW1 went to sleep at 9.00pm, leaving the two men outside.

3. Shortly he heard **STEVEN KIPRONO KOSGEI** screaming and saying:

***“Come and help me, Julius has shot me with an arrow.”***

They rushed out, but Julius had left. An arrow head was stuck on Kiprono’s chest and he was bleeding. PW1 pulled out the arrow head and asked his wife to bring some water so as to clean the wound. He covered the bleeding entry point. The arrow head was produced as Exh.1.

4. They called neighbours to come and help look for Julius but they did not come immediately, and those who later came stood at a distance. PW1, his wife and another brother-in-law tried to control the bleeding in vain, and after ½ an hour the deceased died. They left the body outside and went back to their house.

5. Later the deceased’s brother came at night and took them to the chief’s place, and **PW1** and his wife were taken to the police station and locked up.

Eventually Julius surrendered at **ARROR** police station, and he was charged.

PW1 stated:

***“I do not know why JULIUS killed STEVEN because it was just the two of them.”***

6. On cross examination PW1 explained that it seemed the two men they left seated outside their house, left their home after he and his wife had retired to bed, because he heard Steven’s voice at a distance calling:

***“Peter, Peter, come and help me Julius has shot me with an arrow.”***

7. As he got to the deceased, the latter (who was still alive) said to him

***“Tell my mother, Julius has killed me.”***

8. PW2 **ANNE JEMAIYO MOSOP** confirmed that after she had gone to sleep on 4.12.2012, she heard **KIPRONO** screaming at about 9.30pm calling out to Peter for help and saying

***“Julius has stabbed me with an arrow.”***

Peter ran out to him, he called her to bring water. When she took the water to PW1, she found the deceased lying down with an arrow head stuck on his chest, inside his heart and PW1 was trying to pull it out. A neighbour (**RICHARD**) came to the scene but deceased had died. After the deceased breathed his last, PW1 and PW2 returned to their house. Later the deceased relatives apprehended PW1 and PW2 and took them to **SEBUYET**. PW2 confirmed that the accused is his brother, whom she knows very well, but she could not tell why he killed **KIPRONO**.

9. PW2 in cross examination confirmed she did not see the accused shooting the deceased but she heard a voice calling her husband PW1 (who was with her inside the house for help. When she arrived at the scene, the deceased was lying on the ground still alive and PW1 was trying to give him some assistance.

10. On 5.12.12 **LESLEY BIWOTT CHEMISO** (PW3) got information via phone from **KENNEDY** that someone had been killed in the area. His relatives called to confirm that it was his brother who had been killed – so he rushed to the scene. He found the deceased lying on the ground dead, and observed an injury on the chest. He was informed that the deceased had been shot by **JULIUS** whom he did not know.

11. **RICHARD TOROITICH** (PW4) was resting inside his house at **KAPAGOG** on 4.12.2012 at about 9.30/10.00pm when he heard some noises, and came out. He heard his sister **JOYCE** called out to him that

***“Run, someone has been killed.”***

He rushed to the scene and found someone lying dead. When he asked **JOYCE** what had happened, she said the person was killed by **JULIUS**. PW4 observed the body from a distance, and knew the victim was his neighbour **KIPRONO**. He however did not see **JULIUS** at the scene. He did not see the accused at the scene.

12. **WILLIAM EKIRU** (PW5) attached to **DCIO** Kapsowar received a report from the area chief regarding the incident and visited the scene which was outside the accused’s house.

The body lay outside the accused’s house and he collected and took it to the hospital mortuary where post-mortem was eventually conducted.

13. The post mortem report (MFI-2) indicated the cause of death as hypoglemic shock due to cardiac arrest due to massive haemo-pericardium.

14. On cross examination he confirmed that the first person to be arrested was PW1 but the charges against him were eventually withdrawn as it became apparent that prior to the deceased’s demise, PW1 only went to the scene to try and help by removing the arrow head which was stuck onto the deceased’s body. It was then that police realized PW1 was just a good Samaritan who had gone to assist, and he was treated as a witness.

15. As for the accused he was arrested when he went to report that his house had been burnt down by irate villagers, and purportedly made a confession in a charge and continuing statement.

PW5 further stated:

***“I did not get any malice to kill on the part of the accused. They were just quarrelling before the shooting....After the quarrel the fight broke out although no one witnessed the fight.... I cannot tell whether the arrow belonged to accused or whether he is the one who shot it...”***

16. In his sworn defence, the accused said that on 4.12.12 at 8.00am, he joined other revellers in the home of one William to consume the local busaa brew. Among the revellers were **Peter Kimutai Chebaskwony, Annah Kimosop, Titus Kiprono, John Kaino** and others. He left the revelers at 11.00am to go and look after his goats at **ARROR** within the lowlands, and infact the spent the night in the goat-pen. In the morning, his brother **PAUL** went to inform him that his house had been set ablaze the previous evening. **PAUL** requested him to accompany him to see the damage, then make a report to the police.

17. So he made a report at **ARROR** Police Station, who in turn called **KAPSOWAR** Police Station, then he was told to leave. However when he got to **ARROR** trading centre, he met the **OCS** of **KAPSOWAR** Police Station who requested to accompany him back to the station.

He insisted that he did not kill **TITUS KIPRONO**, saying he last saw him on 4<sup>th</sup> December when they were drinking busaa at a neighbour’s home. He claims that relations between him and PW1 had been strained after his sister **ANNA** deserted him, following the marriage of another wife.

However PW1 eventually followed ANNA to her parents' home and begun living with her, much to the chagrin of the family patriarch, who then assigned the accused the duty of informing PW1 that the sort of living arrangement was not welcome and offended cultural norms. When accused informed PW1 about this, the response was:

***“You, my brother in law, if you come to my home in Kilima, I will kill you.”***

On cross examination the accused claimed that at the drinking den, there were many Juliuses, so the fact that deceased may have mentioned Julius as his assailant did not necessarily prove that he was the culprit.

He denied surrendering to police saying he had merely gone to report that his house had been torched. As far as he knew he left the deceased in the company of PW1, and was infact surprised to see charges against PW1 being withdrawn.

18. He claimed on re-examination that after conveying his father's message to PW1, the latter reacted angrily and told him

***“Never try to come to my home.”***

19. At the close of the hearing the defence counsel submit that the fact that charges against PW1 were dropped and he was converted into a prosecution witness should be treated with a lot of caution, as he may have entered into an agreement to save his skin. As far as the defence is concerned **PETER** was an accomplice.

20. Secondly that whereas the evidence refers to **STEVEN KIPRONO**, the charge relates to **TITUS KIPRONO**, and nothing was presented to suggest that the evidence on record was referring to the same person .

21. It is further submitted that PW1's action of removing the arrow head with adequate medical skills may have been the deceased's underlying.

22. Then there is the claim that since there were many other persons going by the name **JULIUS** and the deceased was not specific as to which Julius he blamed for his injury, it would be unfair to zero in on the accused.

Thirdly, that the accused raised an alibi defence which has not been rebutted, and even if the prosecution was to harp on circumstantial evidence, it still does not discredit the accused's defence.

23. The first issue for determination is who was killed – was it **TITUS KIPRONO KOSGEI** or **STEVEN KIPRONO KOSGEI**? This issue remained unresolved, and no attempt was made by the prosecution to confirm whether the two names referred to the same person, since all the prosecution witnesses referred to Steven Kiprono Kosgei, but the charge sheet, the post mortem report, and even the charge sheet refer to **TITUS KIPRONO KOSGEI**.

24. Unfortunately no photograph of the deceased was presented to at least physically confirm that despite the two different names, they indeed referred to the same person.

25. As to whether there had been a tiff between the accused and PW1, and whether there were many other **JULIUSES**, I think what is apparent is that these came as an afterthought which were never raised during cross examination.

Certainly the circumstantial evidence would have pointed to the accused and no one else, save that the unresolved question as to whether the person who called out to Peter for help and was found dead, was **TITUS** as stated in the charge sheet, or **STEVEN** as claimed by the witnesses. It is only on account of this loop hole that the prosecution case must fail, and I am construed to return a finding of **NOT GUILTY**.

Consequently the accused is acquitted.

**DATED, SIGNED and DELIVERED at ELDORET this 30<sup>th</sup> day of September 2019.**

**H. A. OMONDI**

**JUDGE**