

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.26 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ELIJAH CHEPKWONY KIBET.....ACCUSED

RULING

1. The accused, Elijah Chepkwony Kibet, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 16th day of June 2013 at Makitem village in Bureti Division of Kericho County, he murdered Kipngeno Bett.
2. The prosecution's case is that the accused quarreled with the deceased at the deceased's farm, after which the accused rushed to his home and came back with a bow and arrows. He aimed and shot at the deceased but missed. The accused then stabbed the deceased with an arrow head and he staggered and fell down, bleeding. The cause of death, according to PW6, Dr. Gilbert Langat, was massive internal haemorrhage secondary to rupture of the spleen.
3. The state submitted that the evidence which it had adduced, including three eye witnesses, PW1, PW2 and PW4, placed the accused at the scene of the crime. He had been seen to quarrel with the deceased, then rush home and come back to the scene armed with a bow and arrows which he aimed at the deceased. The state submitted therefore that it was the accused who inflicted the fatal injury on the deceased and it had therefore established a prima facie case against the accused.
4. Counsel for the accused submitted that the evidence showed no prior planning by the accused to murder the deceased. His submission was that it was the deceased who provoked the accused person to defend himself, and his act of defending himself became too excessive in the circumstances. The defence position was that the accused should be discharged of the offence of murder as the prosecution had failed to establish the elements required of such a charge, namely the *actus reus* and *mens rea*.
5. I have considered the submissions of Counsel for the state and defence in this matter. The submissions of the defence are essentially an acknowledgment of the fact that the accused did cause the death of the deceased, but that he was provoked and he therefore did not have the necessary mental element for a charge of murder to be sustained.
6. I remind myself that at this stage, I am only required to be satisfied that a prima facie case against the accused has been established. From the evidence of PW1, the accused, after his confrontation with the deceased, rushed home and came back with a bow and two arrows. He aimed at the deceased but missed. He then used one of the arrow heads to stab the deceased in the stomach. From this evidence, there is sufficient basis for placing the accused on his defence.
7. He is accordingly placed on his defence as provided under section 306 (2) of the Criminal Procedure Code. He is also informed of his right to inform the court whether he intends to give sworn or unsworn evidence in his defence, and whether he intends to call any witnesses.

Dated Delivered and Signed at Kericho this 21st day of February 2018.

MUMBI NGUGI

JUDGE