



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**CRIMINAL CASE NO. 24 OF 2016**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**BERNARD KIPKORIR NGETICH.....ACCUSED**

The Accused above mention is charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code.

The particulars are that on the 25th day of September 2016 at Kibarbata village within Bomet County murdered JOSPHAT KIPKOECH NGETICH.

The prosecution in this case called eight witnesses and the defence one.

**Facts**

Cosmas Kirui (PW1) was at a river washing clothes. At about 4.00 p.m. he was on his way home when he heard screams by children to the effect that somebody had been killed. He went to the scene and met the accused holding a knife. When he asked him what was wrong he threatened him with the knife. The witness screamed for help and the accused ran towards his house where he was arrested and handed over to police. Weldon Kiplangat Kirui (PW2) was attracted to the scene after hearing screams. He testified to have found the accused standing next to the Deceased while armed with a knife. The Deceased had cut wounds around the neck which were oozing blood at the time. The Accused ran towards his house. He was chased and arrested. He further testified that it was him and Bruce Lee Langat who persuaded the accused to open the door of his house and thereafter arrested him and tied him with ropes and called the area administration. The knife was recovered in his house.

Bruce Lee Langat (PW3) testified to have been attracted at the scene after hearing screams. The accused had locked himself in his house. they persuaded him to come out which he did and they recovered a knife which they handed over to police.

Nickson Cheruiyot (PW4) told the court that he heard screams and upon rushing to the scene found the deceased lying on the ground and the accused standing nearby holding a knife which was dripping with blood. He was chased and he went and locked himself in his house. He was later arrested and the knife recovered and handed over to police.

Richard Kimutai Langat (PW6) is a Government analyst he testified to have received from the DCI Bomet

- (1) Blood sample from the Deceased in a bottle marked "A"
- (2) Blood stained metallic knife with a wooden handle marked "B"

He generated D.N.A profile from the metallic knife marked B and of the Deceased Josphat Kipkoech Ngetich and found that it matched.

The Doctor who conducted a post mortem examination on the body of the Deceased found that death was as a result of cardio-pulmonary arrest due to severance of the spinal cord.

The Accused is charged with the offence of murder contrary to section 203 of the penal code which provides:- "Any person who of motive aforethought causes death of another person by an unlawful act or omission is guilty of murder."

Malice aforethought is defined under Section 206 of the penal code thus"-

“Malice aforethought shall be deemed to be established by evidence proving any one of the following circumstances:-

- (a) An intention to cause the death if or to do grievous harm to any 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 bodily harm is caused or not, or by a wish that it may not be caused;
- (c) An intent to commit a felony,
- (d) ...”

In the instant case the incident took place at around 4.00p.m. which was in broad daylight. Prosecution witnesses Cosmas Kirui (PW1) , Nickson Cheruiyot (PW4) were attracted to the scene by screams to the effect that somebody had been killed.

Upon arrival they found the Accused armed with a knife that was dripping blood. The Deceased was lying on the ground with stab wounds around the neck. When they confronted him he ran and locked himself in a house nearby. He was chased and arrested by members of public including Bruce Lee Langat (PW3) and Gilbert Ngeno (PW5). They recovered a blood stained knife which was later handed over to police PC Alfred Irungu who was the investigating officer. He, in the company of other police officers went to the scene of murder acting on a report made to them.

They found the accused having been arrested and detained at a nearby church building and were shown the lifeless body of the Deceased which was in a maize shamba. The body had deep cut wounds on the neck. A knife which was the murder weapon was handed over to them. It was later taken to the Government chemist for analysis. He later produced the knife as an exhibit.

In his unsworn statement the Accused told the court that he is a tea plucker and that he had gone to pluck tea when he heard screams nearby. He went to check and found that his brother (the Deceased) had been stabbed with a knife and was lying on the ground. People at the scene started pointing an accusing finger at him saying that he was the murderer. They threatened to beat him and he decided to escape by running away.

They caught up with him and he was beaten unconscious. The accused does not deny to have been found at the murder scene but he alleges that he was attracted there by screams. The evidence by prosecution witnesses PW1, PW2 and PW4 is that they saw the accused holding a blood stained knife while standing near the body of his lifeless brother (Deceased) and that when he was confronted he ran away and was arrested by among others PW3 and PW5. The knife the accused was seen holding aloft while at the scene was recovered from him and later handed over to police. Blood sample from the deceased and the knife were taken to a government analyst who conducted tests and found the blood sample from the knife matched that of the Deceased. Meaning that the knife was the murder weapon. This murder weapon was found with the Accused moments after the incident. The evidence by the Government chemist (PW6) corroborates that of PW1, PW2, PW4.

Post mortem examination revealed that the Deceased sustained multiple cuts on the head, the neck left arm and right one, the abdomen and the thigh. This attack was vicious going by the cut wounds sustained by the Deceased which included a severed spinal cord. The attacker must have intended to cause grievous bodily harm or to kill. The Accused had the mens rea to kill and he did proceed to inflict the fatal wounds on the deceased and ran and hid in his house. The act of this running and hiding is not consistent with innocence.

I am satisfied that all the ingredients of murder were proved beyond reasonable doubt. The Accused is found guilty as charged contrary to Section 203 of the penal code and convicted under S.322 of the CPC.

Judgment delivered dated and signed this 14/3/2018.

In the presence of learned counsel for the prosecution Mr. Barasa. Learned counsel for the defence Miss Asimwe hold brief Bii.

Court Assistant Mr. Rotich

**M. MU YA**

**JUDGE**

**14/3/2018**

Prosecutor – He may be treated as a first offender.

Miss Asimwe – We pray for a date for mitigation

Court- Mention on 20/3/2018 for mitigation.

Probation Officer's Report to be availed.

**M. MUYA**

**JUDGE**

**14/3/2018**