

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 24 OF 2012

REPUBLIC.....APPELLANT

VERSUS

JOSEPH KIBET KORIR.....RESPONDENT

RULING

JOSEPH KIBET KORIR is charged with two counts of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of the offence in the first count are that on the 26th day of March, 2012 at Ngowo village, Tinomoi sub location, Bekiboni location in Baringo Central District within Baringo County, the accused murdered *Komoi Chepyator*.

Particulars of the offence in the second count are that on the 26th day of March, 2012 at Illiagat village, Tebei sub location, Tuluongoi location in Baringo Central District within Baringo County, the accused murdered *Kimoi Chirchir*.

This case was closed prematurely after the prosecution called 4 witnesses and failed to avail the rest. Their case is that on 26th March 2012 at 4.00 p.m PW-1 was with PW-4 at home, where he was building his house. The accused visited the place. He is a cousin to PW-1. He was armed with a bow, arrow and a panga. He sat down and requested for water. PW-1 gave him water. He then said someone was looking for him and went further in Swahili to state that, "*leo ni mwisho wa dunia*". Meaning "*today is the end of the world*". PW-4 was working on the roof. The accused aimed arrows at them. PW-1 told him not to shoot at them. The accused shot an arrow aimed at PW-4 but missed. PW-4 got down and together with PW-1, escaped. When they returned they heard that the accused had killed two people. In the bush they got the body of a woman called *Komoi Chepyator*, whose head was completely severed. About a kilometer from that scene there was another body of *Kimoi Chirchir* which had a cut in the neck. This second body was of the mother of PW-2. That day PW-2 was at Tenges and at 9.00 p.m was told by a neighbor called *Samuel Cheboi*, that his mother had been killed. He rushed to the scene with his brother namely *Joseph Morogo*, and found the body. This particular body had been seen much earlier at about 6.30 p.m by Pw-3 on his way to Illiagat centre. He called the assistant chief, one *Agnes Koech*. He also informed other people. Together with the other people they traced the second body of *Kimoi Chepyator*. The police later got to the scene and collected the bodies.

At this point, I am obliged to determine as to whether a prima facie case is established against the accused person, by the prosecution, so as to warrant him be placed on his defence.

The prosecution case upto the point it reached before closure, only raises mere, weak suspicion against the accused person. The suspicion is only founded in the evidence that he tried to shoot at PW-1 and PW-4 with an arrow, and was at the time armed as well with a panga. He sounded agitated but it is not clear by who, as he claimed someone was looking for him and said in Swahili, "Leo ni mwisho was dunia". However, it is not known whether the deceased were killed thereafter or had already been killed. There is no evidence in the case as to the time they were killed and by who. The evidence that the accused killed them is hearsay as PW-1 was only told about it and we do not even know by who. The same applies to the evidence that accused surrendered himself to the police. No single police officer gave evidence in this case. Those who collected the bodies and the investigating officer never gave evidence. The officer who conducted the post mortems and made reports was also not called as a witness. The cause of death to the two deceased persons was not established. There is therefore no evidence that it is the accused person who attacked and injured the deceased persons and that the injuries inflicted upon them led to their death. As such, a prima facie case is not established against him and is acquitted on both counts under *Section 210* of the *Criminal Procedure Code*.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 24th day of October, 2018.

In the presence of:-

- (1) The accused
- (2) Madam Kagali state /prosecutor
- (3) Mr. Mwelem- Court Assistant