



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL CASE NO.24 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOYCE CHEPNGENO.....1<sup>ST</sup> ACCUSED**

**JULIUS KIPKEMOI RONO.....2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused were charged with the offence of murder contrary to section 203 as reads with section 204 of the Penal Code. The particulars of the offence were that on the 10<sup>th</sup> day of June 2014, at Kibogo settlement within Kericho East District, Kericho County, jointly with others not before court, they murdered Bernard Kipkemoi Langat. They both pleaded not guilty to the offence and their trial commenced before the Hon. Ong’udi J on 13<sup>th</sup> May 2015.

2. Following the transfer of Ong’udi J in March 2016 from the station, direction were taken under section 200 of the Criminal Procedure Code that the case proceeds from where it had reached. The final prosecution witness testified before me on 11<sup>th</sup> November 2016, and the prosecution closed its case. Counsel for the accused indicated that he intended to submit on no case to answer, and submissions were made on 31<sup>st</sup> January 2017.

3. Mr. Koske for the accused submitted that the accused had no case to answer. His submissions were that the prosecution has not established a prima facie case for the accused to be placed on their defence. The evidence adduced by the prosecution, according to Mr. Koske, is based on circumstantial evidence which does not form a chain of evidence which may establish the offence of murder. That the only link of evidence between the accused persons and the murder of the deceased was the mobile phone.

4. In his view, this line of defence was doubtful as the last person to hold or possess the phone was the deceased’s long term girlfriend, PW3, Faith Chelangat (hereafter Chelangat) whose evidence was that she had been given the phone by the deceased on 9<sup>th</sup> June 2014 to charge for him in the residence where they were living together. Chelangat was in possession of the phone from 9<sup>th</sup> June 2014 to 10<sup>th</sup> June 2014 when it was discovered that the deceased was murdered.

5. Counsel also referred to the prosecution evidence on how the phone was recovered by PW9, Nehemiah Ndirangu, the investigating officer (Ndirangu). His submission was that there was nothing to link the phone to the accused, nor did any of the witnesses who testified link the accused persons to the murder of the deceased.

6. Ms. Keli for the state submitted that the evidence on record is sufficient to warrant the accused being placed on their defence.
7. I have evaluated the prosecution evidence on record. What is without dispute is that the deceased was pulled out of Kimugun river in the afternoon of 10<sup>th</sup> June 2014. The prosecution case was predominantly about the discovery of the body. The evidence of PW1 Benjamin Kipyegon Cheruiyot, a village elder (Cheruiyot), was that on 10<sup>th</sup> June 2014 at about 2.00 p.m he was called from a meeting and informed that there was a body in the river. He went to the river with villagers and after calling the Chief and DCIO who sent officers, the body of the deceased was removed from the river.
8. PW2 was Julius Kipkirui Mutai. His evidence was that he was at home on 10<sup>th</sup> June 2014. His wife and others went to collect firewood. They found people looking at a dead body in Kimungun river. She returned home and informed him about it, and he called a village elder, Cheruiyot, about it, and Cheruiyot informed him that he was already at the scene. Police came and took photos of the body, and it was identified as that of the deceased. It had injuries on the hands, neck and head. There was no evidence of a struggle at the river.
9. PW3 was the deceased's live in girlfriend, Faith Chelangat. Her evidence was that on 9<sup>th</sup> June 2014 at 5.00 p.m. she was in the house with the deceased. She used to work at night while he worked during the day at the County Government. When she was leaving the house at 5.00 p.m, the deceased gave her his phone to charge for him, and said that he would come to collect it, but he did not. She further testified that at about midnight on that day, she decided to go back to the house. She did not find anything odd at the house she shared with the deceased, so she slept upto morning.
10. The following day, she left the phone on the table and went to town to look for the deceased. She went to the deceased's friend Davy at the stage in Kericho to inquire about him but Davy had not seen him. She stayed in town until 5.00 p.m, then went to work. She testified that she tried to call him several times but could not find him. When she returned home after work, she found that the house had been broken into and the phone and other things stolen. She identified the deceased's phone, a small black Samsung. She went to sleep and in the morning she went to visit a neighbour, and it was while there that she was informed by a village elder that the deceased had been killed and his body found in the river.
11. John Rono, PW4, testified that he worked at the County Offices in the Engineer's Department. On 27<sup>th</sup> June 2014 he heard that the deceased, who was one of the employees, had not been coming to work.
12. PW5 was Robert Kiprotich Koskei, (Koskei), a tea plucker at Unilever. His evidence was that he had been arrested on 8<sup>th</sup> July 2014 on the basis that he had sold a stolen phone to someone. He was shown the person who alleged that he had sold the phone to him, a person whom he testified he did not know.
13. PW6, No.86619 P.C Titus Muriuki Rukunga from CID Kericho Crime Scene Support, produced photos of the deceased after he was taken out of the river. The photographs show the nature of the injuries that the deceased had sustained.
14. PW7, Corporal (AP) No.224649- Stephen Bii was informed by his cousin, the deceased's mother, about the death of the deceased. He went with her and two others to the mortuary and they identified the body of the deceased to the doctor who performed the post mortem.
15. Dr. Gilbert Langat, a doctor at Kericho District hospital, produced the post mortem report on behalf of Dr. Nyakundi who had performed the post mortem on the deceased. Her findings were that the deceased had a deep cut wound on the right side of the neck, a cut wound on the anterior aspect of the ear and on the left aspect of the neck. He also had cut wounds on the right buttock, right upper arm and posterior aspect on right lower limb. Internally, the deceased had a cut on the right artery which supplies blood to the brain, and had bled a lot. The cause of death was massive haemorrhage from the neck artery.
16. PW9 was the investigating officer, No. 62155 Corporal Nehemia Ndirangu, a police officer deployed

in the Directorate of Criminal Investigations Department, previously stationed at the DCIO's office, Kericho. He was directed by the DCIO to take over the investigation of this matter. He was present at the post mortem of the deceased on 13<sup>th</sup> June 2014. He also visited the scene where the body of the deceased was found, on the banks of the Kimugun river, and drew a sketch map. He also visited the County Government of Kericho Head Office where he established that the deceased worked as a casual labourer in the department of public works from 20<sup>th</sup> May to 27<sup>th</sup> June 2014 as captured in the County Payroll which he produced in court. He also recorded statements from prosecution witnesses.

17. According to Ndirangu, he gathered from Chelangat, the deceased's long term girlfriend, that they used to live together and that the last time they had communicated by cell phone was on 9<sup>th</sup> June 2014. He also gathered that the deceased was the registered user of SIM Card No.0729139887. He applied before the Chief Magistrate's Court Kericho in Miscellaneous Criminal Application No.72 of 2014 for orders to investigate cell phone SIM card number 0729 139887 belonging to the deceased and cell phone SIM card number 0719742028 registered in the name of the first accused, Joyce Chepngeno. He obtained the orders which he served on Safaricom Limited.

18. Ndirangu's further evidence was that on 5<sup>th</sup> July 2014, he conducted an operation along the Kericho Kisii Highway at a place called Chebown in company with other officers. The operation was conducted on the basis of intelligence information which tracked the user of a mobile hand set belonging to the deceased, whose international mobile identity number is 3556120 26967320, while the mobile hand set is SGH – B130S, a Samsung which had been last used by the deceased on 9<sup>th</sup> June 2014.

19. The officers tracked the first accused person in rented premises at the said shopping centre. They recovered the mobile hand set and a sim card from the first accused which were identified by Chelangat as belonging to the deceased.

20. Ndirangu further testified that according to the reports they got from Safaricom Limited, the cell data showed that the first accused Joyce Chepngeno, the registered holder of identity card number 26516445, was using the deceased's handset

21. The first accused then led the police to the homestead of the 2<sup>nd</sup> accused, whom she alleged was her husband of 10 years, and whom she informed the police had given her the cell phone. The two were later charged with the offence of murder that they currently face.

22. Ndirangu's evidence was that the first accused used the deceased's cell phone using her cell phone number 0719 742 028. She alleged that she had been given the hand set by the second accused. The second accused alleged that he had bought the hand set from Koskei, PW5, who denied having sold the hand set to the second accused. The prosecution evidence was that the deceased's phone was still in use after he was found murdered; that he last used it on 8<sup>th</sup> June 2014, and then it was activated on 17<sup>th</sup> June 2014 by the first accused.

23. Further, Ndirangu testified that the 2<sup>nd</sup> accused did not offer any explanation as to how he came to be in possession of the deceased's phone except that it was sold to him by PW5.

24. In cross examination, Ndirangu testified that his interrogation of Chelangat elicited the evidence that the deceased's phone was not being charged where he was residing with her, but at her place of work. He conceded that Chelangat was in custody of the hand set on 9<sup>th</sup> June 2014, and that she left it on the table and went to town. He further conceded that the deceased died without the handset as his girlfriend had it, and he also conceded that the deceased was found without the hand set. In re-examination by Ms. Keli for the state, Ndirangu stated that it was possible that the deceased could have gone back for the phone on 10<sup>th</sup> June 2014, picked it, and then was attacked.

25. In response to a question from the court, Ndirangu stated that the deceased's body was found in the river at about 3.50 p.m. on 10<sup>th</sup> June 2014. The deceased had given the phone to Chelangat to charge at

her place of work on 9<sup>th</sup> June 2014 at around 4.00 p.m. She returned home that night and found that the deceased was not home. She had the phone with her on 9<sup>th</sup> June 2014.

26. Section 306 of the Criminal Procedure Code provides as follows:

***(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.***

27. I have set out above the evidence adduced by the prosecution in this matter. The prosecution evidence is primarily that the deceased was found in Kimugun river on the afternoon of 10<sup>th</sup> June 2014. He had been viciously attacked, and had multiple deep cut wounds. He had died, according to the post mortem report, as a result of extensive haemorrhage from the carotid artery consistent with the stab wound on the right aspect of the neck.

28. The question is whether the prosecution has established a prima facie case that it was the accused persons in this case who attacked and caused the death of the deceased. The only link that the prosecution has made between the accused and the deceased is the possession by the 1<sup>st</sup> accused of the deceased's hand set. She was arrested on 8<sup>th</sup> July 2014 in possession of the hand set. Investigations by the police established, from data from Safaricom Limited, that she had activated it on 17<sup>th</sup> June 2014. She had been given the handset, according to the evidence of Ndirangu, by the 2<sup>nd</sup> accused. The 2<sup>nd</sup> accused allegedly told Ndirangu that he had bought the handset from PW5, who in his evidence before the court denied ever having sold the hand set to the second accused.

29. However, the evidence of Chelangat, the deceased's long term girlfriend, fatally undermined, in my view, the prosecution case against the two accused persons. Her evidence was that she was with the deceased on 9<sup>th</sup> June 2014 when he gave her his phone to go and charge it for him. She took it with her. He had stated that he would go for it, but did not. She went back to their shared residence at about 12.30 a.m. on 9<sup>th</sup> June 2014, (which would be the morning of 10<sup>th</sup> June 2014) did not find the deceased at home, did not think there was anything unusual, so she slept. The next day, the 10<sup>th</sup> of June 2014, she woke up and went to look for the deceased in town. She left the deceased's phone on the table.

30. She did not return to the house that day, as she testified that she stayed in town until 5.00 p.m., then went to work. She returned home after work, where she found that the house had been broken into, and the deceased's phone and other things missing. She went to sleep. She learnt the following day, the 11<sup>th</sup> of June 2014, that the deceased had been found dead in the river the previous day.

31. Aside from the fact that the 1<sup>st</sup> accused was found in possession of the deceased's phone on 8<sup>th</sup> July 2014, there is nothing in the prosecution evidence that connects either her or the second accused to the murder of the deceased. As was conceded by Ndirangu, the deceased did not have his phone with him when he died. He had given it to his girlfriend to charge, and she was in possession of it on the night of 9<sup>th</sup> June 2014. She had it with her on the morning of 10<sup>th</sup> June 2014, when she left it on the table in the house she shared with the deceased. She alleged that when she returned in the evening, she found that the house had been broken into, and the phone stolen, a claim that was not investigated by the police.

32. Regrettably, the post mortem report does not indicate the time of death of the deceased. However, the body of the deceased was found in the river sometime between 2.00 p.m and 3.50 p.m. on 10<sup>th</sup> June 2014. When he was attacked and killed, and thrown in the river, is not certain. However, the only item that connects the deceased with the accused, the cell phone, was in the possession of the deceased's girlfriend. She then left it on the table, and according to her evidence, she returned to find the house broken into and the phone and other things stolen.

33. One may speculate, as Ms. Keli suggested in her re-examination of Ndirangu, that the deceased may

have returned, taken the phone, and been killed. However, I am satisfied that the prosecution has not been able to establish a prima facie case against the accused. The worst that they can be guilty of is possession of a stolen handset, but this would, on the evidence before me, be stolen following the burglary that Chelangat testified had occurred in the home she shared with the deceased, where she had left the phone on the morning of 10<sup>th</sup> June 2014. There is no evidence before me that justifies placing the accused on their defence in this case.

34. It is tragic that a young man, still in his twenties, met his death in this vicious manner, and was discarded in a river like so much garbage. However, there is nothing before me in the evidence adduced by the prosecution that establishes a prima facie case against the accused that would justify placing them on their defence. Accordingly, I acquit them under section 306 (1) of the Criminal Procedure Code.

**Dated, Delivered and Signed at Kericho this 29<sup>th</sup> day of March 2017.**

**MUMBI NGUGI**

**JUDGE**