



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL CASE NO. 29 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL KIPSANG SUGUT.....ACCUSED

JUDGMENT

1. *Samuel Kipsang Sugut* is charged with the murder of his wife, *Veronica Jepkoros Jeptum*. According to their son (PW6), the accused claimed that the deceased had fallen into *Kapweting River*. It was on the night of 1st May 2011. The accused borrowed a torch and he and PW6 headed to the river. They found the deceased lying on the river bank. She told PW6 that the accused *stabbed* her following a quarrel.

2. The area chief (PW7) said that on the night of 2nd May 2011, at about 9:00 p.m., the accused barged into his house. He *told* him that he had *killed* his wife. PW7 advised him to report the matter to the police.

3. The Republic brought *information* to the High Court charging the accused with *murder* contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on 1st May 2011, at Nduroto village in Cheptuiyet Sub-location of Nandi County, he murdered *Veronica Jepkoros Jeptum Sugut*.

4. The accused pleaded *not guilty*. The prosecution called *eight* witnesses. PW1 was Dr. Macharia. He is a pathologist at Moi Teaching and Referral Hospital. He carried out the autopsy on 11th May 2011. The body was identified by Richard Kipyego (PW4) and Wilson Koech (PW3). There were stab wounds on the right side of the chest and the right middle finger. The stab wound on the chest had pierced through the liver and into the gall bladder. There was a lot of blood in the abdominal cavity. The cause of death was shock due to “excessive internal bleeding caused by a penetrating stab wound”.

5. PW2 was Henry Sang. He is a government analyst at Nairobi Laboratory. On 23rd May 2011 he examined the following items: blood sample *A1* for the deceased; a blood sample *A2* from the accused; a knife in a khaki envelope marked *D1*; a pink blouse marked *C1* belonging to the deceased; a blue jacket marked *C2* belonging to the accused; and, 250 grammes of sugar in a polythene bag packed in khaki paper marked *D1*.

6. The items and the attached *memo form* were given to him by Inspector Mwaura of Kapsabet Police Station. His findings were as follows: the knife *D1* and jacket *C2* were stained with human blood. The blouse *C1* was heavily stained with human blood. The packet of sugar was moderately stained with human blood. DNA profiling revealed that the blood on the jacket, blouse and packet of sugar matched

that of the deceased. His report was admitted as exhibit 2.

7. PW3 was Wilson Koech. He is a brother to the deceased. On the night of 1st May 2011 he and his brother Richard Kipyego (PW4) received information about the assault. They went to the house of the deceased. They found her lying on a mattress inside her house. She was bleeding from the left side of her chest on the left breast. They got a motor bike and took her to Kabiyet Hospital. The next day, they were informed that the condition of the patient had deteriorated. She was transferred to Moi Teaching and Referral Hospital where she died at about 5:00 p.m. He said that the deceased told him at Kabiyet Hospital that the accused complained of her lateness. He also accused her of going out with a man called *Justus*.

8. He said the deceased was wearing a black jacket with white stripes and a pink blouse. He identified the items in court. He did not see the knife. He said the couple had many disputes; and, they used to fight about her drinking habits. Upon cross examination, he said that *Arap Tirop*, a neighbor, informed him of the attack. It was about 8:30 p.m. He said that his house was 800 meters from that of the deceased.

9. When he got to the house of the deceased, he found one child, Kibet. The accused had disappeared. He said the deceased was not drunk on the day she was stabbed. He admitted that in his statement to the police, he said the deceased was carrying some sugar which the accused tried to snatch away. He told the police that the accused *said* the deceased was out with a man called Justus. He did not put the *name* in the statement. He clarified that six people accompanied the deceased to hospital.

10. PW4 was Richard Kipyego. He is also a brother of the deceased. He confirmed the narrative by PW3. He added that he saw a packet of sugar and a knife next to her body. He did not speak to deceased immediately. He said she was not talking. Upon cross examination, he said the accused and deceased used to drink. He said the deceased was drunk when she was assaulted by the accused. He clarified that the knife was found in the *shamba* next to the house. He only saw it later at Kabiyet Police Station. He said that the deceased did not speak to anyone after the incident; not even at Kabiyet or Moi Teaching and Referral Hospital. All she said was "*mimi nakufa*". He said the deceased did not say who killed her.

11. PW5 was Priscah Chemutai. She found the deceased lying on a nylon sack. She had a stab wound on the chest. She screamed. She said the deceased told her that the accused stabbed her. She pleaded to be taken to hospital. Upon cross examination, she conceded that in her statement to the police, she had said she found the deceased next to the river. She clarified that she found her in her house; and, that she did not speak to deceased.

12. PW6 was Geoffrey Kibet Sang. He is a son of the deceased. On the afternoon of 1st May 2011, he and the deceased were cultivating land. She left the farm at about 3:00 p.m. and went to the house. PW6 went to his neighbour's place. The neighbor was Arap Tirop. He stayed there for two hours. When he returned home, his mother was not there. He went back to Arap Tirop's home. His father (the accused) came to Tirop's house. He borrowed a torch. He told PW6 that the deceased had fallen into Kapweting River.

13. PW6 and Arap Tirop accompanied the accused to the river. They found the deceased 3 metres from the river. She was drunk. She told PW6 that the accused had stabbed her after an argument. He and the accused left to look for money to take her to hospital. They left Tirop taking care of the deceased. They returned and ferried the deceased on a motorbike to Kabiyet Hospital. PW6 went back to sleep. He said he did not know where his father went after that. He learnt the next day from Kipchirchir that his mother died.

14. Under cross examination, he said the deceased left the farm for the *posho* mill. He was emphatic that she told him the accused stabbed her. In his statement to the police he had said that the deceased got into an argument with the accused after returning from the *posho* mill. He said the deceased was drunk after returning from the *posho* mill.

15. PW7 was Hosea Kosgei. He is the assistant chief Cheptuiyet sub-location. On 2nd May 2011 at about 9:00 p.m., he was at home with some visitors. Someone opened the door. It was the accused. He knew

him. After exchanging greetings, he said *he* killed his wife. PW7 called the OCPD Kabiyet Police. He came with other officers. They arrested the accused. The following day, PW7 accompanied the police to the scene. The police recovered a bloodstained pink blouse and grey jacket. They also recovered a knife 3 meters behind the house. It was a kitchen knife. On cross examination, he said that the accused told him he stabbed the deceased because she was with another man. When the accused entered PW7's house the previous night, he (accused) was *not* drunk.

16. The last State witness was Chief Inspector Mwaura (PW8). He received information that the accused had surrendered to PW7. He rearrested the accused. The accused was wearing a grey jacket. He removed it. He said it had some bloodstains. The following day, he went to the scene. He found the knife behind the house in a maize field. The son of the accused identified the knife. He also recovered the pink blouse which was worn by deceased; and, a parked kilo of sugar. He took a blood sample from the deceased; and, another from the accused. The samples were submitted to the government analyst. PW8 formally produced the exhibits in court.

17. That marked the close of the prosecution's case. When the accused was put on his defence, he elected to make an *unsworn statement*. He protested his innocence. He denied stabbing the deceased. He opined that the deceased was injured by sticks in the river. He said the following-

"I live in Kabiyet Nduruto. I was married to two wives Margaret Cherotich (deceased) and Veronica Jeptum also deceased in 2011. I am charged with murder of Veronica. On 1.5.2011 I returned to my home with Veronica at 8.00 p.m. I heard screams near the river, I heard someone say 'Samuel nisaidie'. I screamed. I found Veronica at the river. She was in the water. She used to have fits. She used to fall a lot.

"I removed her from the water. I called for help. My son Elvis Kibet came to help. Elvis did not tell the court the truth. I was helping the deceased. I never stabbed the deceased. If she was hurt, it was by sticks in the river. I know Richard Kibiego (PW4). I, Kibiego and Kiptoo Koech took deceased to hospital. The deceased died at Moi Referral Hospital. My wife (deceased) used to take alcohol. When drunk, she would be destructive."

18. That marked the close of the defence. The Republic and the defence have filed their final submissions. Those by the learned Prosecution Counsel were filed on 8th May 2017; and, those by the learned counsel for the defence on 3rd May 2017. I have paid heed to the submissions.

19. I have considered the evidence. I have also paid heed to the written submissions. Section 203 of the Penal Code provides that *any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder*.

20. There are three key ingredients that *must* be present in the offence of murder: first, the prosecution must prove beyond reasonable doubt the *death* of the deceased and the *cause* of that death; secondly, that the accused *committed* the unlawful act that led to the death; and, thirdly, that the accused was *of malice aforethought*. Malice aforethought is the *mens rea* or the *intention* to kill another person.

21. Malice aforethought is the *mens rea* or the *intention* to kill another person. Section 206 of the Penal Code defines it as follows;

"206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances -

(a) an intention to cause the death of 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) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

22. From the evidence of the pathologist, there is no doubt about the death. He carried out the autopsy on 11th May 2011. The body was identified by Richard Kipyego (PW4) and Wilson Koech (PW3). The cause of death is *known*. There were *stab wounds* on the right side of the chest and the right middle finger. The stab wound on the chest had *pierced* through the liver and into the gall bladder. There was a lot of blood in the abdominal cavity. The cause of death was shock due to “*excessive internal bleeding caused by a penetrating stab wound*”.

23. From that evidence, I entertain no doubt that the death was *unlawful*. The only live question now is whether the accused, of *malice aforethought*, killed the deceased. There is no direct eye witness account of the attack. But there is *very strong* circumstantial evidence. In *R v Kipkering arap Koske & another* 16 EACA 135 (1949) the court held-

“In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt”

24. See also *Sawe v Republic* [2003] KLR 364. The first key question relates to *identification*. No witness saw the accused attack the deceased along the banks of Kapweting River. If the accused is to be believed, the deceased must have fallen into the river and got injured by sharp sticks.

25. But there is ample evidence placing the accused at the *locus in quo*. The first *compelling* piece of circumstantial evidence in this case is this: The accused told his son (PW6) that the deceased had fallen into the river. It was on the night of 1st May 2011. The accused borrowed a torch and he and PW6 headed to the river. They found the deceased lying on the river bank. The deceased told PW6 that the accused *stabbed* her following a quarrel. Secondly, the accused in his defence stated as follows-

“I heard screams near the river, I heard someone say ‘Samuel nisaidie’. I screamed. I found Veronica at the river. She was in the water. She used to have fits. She used to fall a lot.

“I removed her from the water. I called for help. My son Elvis Kibet came to help. Elvis did not tell the court the truth. I was helping the deceased”

26. Thirdly, the accused led PW6 and Arap Tirop to where he left the deceased. There is thus no doubt that the accused encountered the deceased at the river. There is *no* evidence that there was *another* person *except* the two.

27. Fourthly, there are the words spoken by the deceased to her son (PW6). They amount to a *dying declaration*. They are admissible under section 33 (a) of the Evidence Act. They were her last words. Although PW3 Wilson Koech said the message was repeated by the deceased as she lay on a mattress or sack in the house, I did not believe it. The reason is that PW4 and PW5 accepted in cross examination that the deceased was *unable* speak in the house, Kabiyeet Hospital or the Moi Teaching and Referral Hospital. *Dying declarations* should be treated with *caution*; and, there is need for *corroboration*. See *Pius Jasunga Okumu v Republic* (1954) 21 EACA 333. The statement by the deceased to PW6 was *corroborated* by PW7. The accused told PW7 that he had killed his wife.

28. From her last words, it is clear that the accused attacked her because she was *late*; and, he accused her of having been in the company of another man, *Justus*. Therein lay a clear *motive*. From the evidence of the deceased’s brothers PW3 and PW4, the accused and deceased used to constantly fight over her drinking habits.

29. PW6 said the deceased was *drunk* when she returned from the *posho* mill on the *material date*. Coupled with her tardiness and allegations of an affair with *Justus*, it is not surprising that the accused attacked her. The deceased was stabbed with a sharp object. The object *pierced* through the liver and into the gall bladder. The viciousness of the attack was meant to cause *grievous harm* or to *kill*. From the report of the government analyst (exhibit 2), the knife in a khaki envelope marked *D1*; and, the jacket *C2* worn by the accused were stained with human blood. DNA profiling revealed that the blood *matched* that of the deceased.

30. The fifth and final piece of compelling circumstantial evidence came from PW7. On the night of 2nd May 2011, at about 9:00 p.m., the accused burst into his house. He *told* him that he had *killed* his wife. PW7 advised him to report the matter to the police. Although PW7 was a chief, and *arguably* a person in authority, he had *no* control over the accused at that *point*. The accused was *not* under *arrest* and *volunteered* the information *freely*. I find the evidence is admissible under section 26 of the Evidence Act.

31. The next key question is whether the accused, *of malice aforethought*, killed the deceased. I find that the *actus reus* and *mens rea* for murder have united in this case. The attack revealed the intention to *kill* or to cause *grievous harm* as defined in section 206 (a) and (b) of the Penal Code. The deceased died the next day at the Moi Teaching and Referral Hospital. I thus readily find that the accused killed the deceased *of malice aforethought*.

32. I am alive that the legal burden of proof lay throughout with the prosecution. See Woolmington v DPP [1935] AC 462, Bhatt v Republic [1957] E.A. 332, Abdalla Bin Wendo and another v Republic (1953) EACA 166, Kaingu Kasomo v Republic, Court of Appeal at Malindi, Criminal Appeal 504 of 2010 (unreported).

33. When I juxtapose the corpus of evidence against the defence set up by the accused, the defence crumbles: it is far-fetched and a red herring. He was not *saving* the deceased. He *attacked* her with a sharp object. It is instructive that the knife was recovered by Chief Inspector Mwaura (PW8) behind the homestead of the accused in the maize field. That fact was corroborated by PW4. I have already stated that the bloodstains on the knife and the jacket worn by the accused matched the blood type of the deceased.

34. I have reached the conclusion that the entire corpus of *circumstantial* evidence points *irresistibly* and *exclusively* to the guilt of the accused. See R v Kipkering arap Koske & another 16 EACA 135 (1949), Sawe v Republic [2003] KLR 364. The chain of events is *complete*; and, there is *no* hypothesis that exonerates the accused. The homicide was *premeditated*. I find also that the accused had a clear *motive* to kill the deceased on allegations of being with another man. He had *no* legal justification for his conduct. The prosecution has thus *proved* the charge *beyond reasonable doubt*.

35. The upshot is that the accused, *of malice aforethought* caused the death of *Veronica Jepkoros Jeptum* by an *unlawful act*. It must follow as a corollary, that the accused is culpable of murder. I accordingly enter a finding of *guilty*. The accused is hereby *convicted* under section 322 of the Criminal Procedure Code.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 30th day of May 2017.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

Accused.

Mr. Miyienda for Mrs. Nyamwega for the accused.

Mr. Muchiri for the Republic.

Mr. J. Kemboi, Court Clerk.