



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA

CRIMINAL CASE NUMBER 26 OF 2016

REPUBLIC.....PROSECUTION

VERSUS

SIMION KOMURKONY.....ACCUSED

JUDGMENT

SIMION KOMURKONY, the accused herein, is charged with the offence of **Murder, Contrary to Section 203 as read with Section 204 of the Penal Code.**

The Particulars of this offence are that on the 10th day of May, 2016 at Mokoyan Village, Kaptakbuk Location, in Pokot South Sub-County, within West Pokot County, the accused murdered Barnabas Limareng.

The prosecution case is that the accused herein, the deceased one Barnabas Limareng and David Kamzee (PW-3) are brothers. They were living in the same farm near the forest. PW-4, Limareng Loriwon is their father, while Julius Kodoreng, the PW-1 in this case is a son to PW-4 and a brother to the accused, deceased and David Kamzee. PW-2, one Chemuso Barnabas Sambul, was the wife to the deceased (now a widow).

On 10.5.2016 in the morning at around 7.00am PW-3 was at home in Mokoyon. The deceased visited him. He wanted them deliberate about a path of which the deceased's children were using to go to school, and of which PW-3 had closed. PW-3 told him they should call their father. They called him (PW-4). While deliberating, the accused passed nearby carrying his milk. He asked who was there, referring to where PW-3, the deceased and PW-4 were. PW3 told him to just go his way. He went on as the trio commenced deliberating about the path issue. The accused returned back to the scene. He was armed with a club. He just hit the deceased with it on the head. The deceased ran away. The accused pursued him. He fell ahead and rose. The accused caught up with him. He stabbed him 3 times using a knife. PW-3 ran to where the deceased was. The accused told PW-3 to let them kill each other as they were both children of Cheronges. PW-1 witnessed as the accused chased the deceased. The wife of the deceased (PW-2) also witnessed this incident. The accused was saying he will kill the deceased and his wife. This prompted PW-2 to run into the forest. The accused went to her house looking for her, but in vain. She soon thereafter went to where her husband was lying. He said Simion Komurkony is the one who have killed him and urged those present to take care of his children. According to PW-1 the deceased and the accused had quarreled before as the accused had an affair with the deceased's wife. They had deliberated on the issue and the accused had agreed to stop the relationship. Another issue they had is that the goats of the deceased had fed on maize and millet plants of the accused person. When the deceased offered the accused a goat for compensation the accused refused to take it.

PW-1 and PW-3 wanted to take the deceased to hospital. They were near the forest. They made a

stretcher using tree plunks and a blanket. As they were preparing he passed on. They called the area chief. The police did not visit the scene. They carried the body to Mokoyon Centre. Police went for the body at the place. PW-5 organized to take it to the mortuary at Kapenguria County Referral Hospital.

On 16.5.2016 PW-6 conducted a postmortem on the body. The body was identified to him by PW-5. He noted that the body had three stab wounds. One was in the right shoulder, another on the right between 8th and 9th ribs and the 3rd one between 10th and 11th ribs. He was of the opinion that the cause of death was severe acute hemorrhage, secondary to puncture of the right lung and right ventricle of the heart, together with tension pneumothorax.

The stab wounds, according to him, were caused by a single edged sword or knife. The said injuries were sufficient to kill the deceased.

The accused had gone underground after the incident. He was even not present to attend the burial of his brother.

On 19.8.2016 PW-6 in Company of CID personnel in CIU Department proceeded to Kapsabet Town. They had information that the suspect was in Kapsabet area. There is a phone they were tracking. Through the system they got Zakayo Kiprono Soyi who was the supervisor of Wilgos Security Company, of which had employed the suspect. Within 10 to 15 minutes the said Zakayo Kiprono Soyi took them to where the suspect was residing. He was arrested and taken to Kapenguria Police Station.

PW-8 investigated the case and had him undergo a mental check up. It was found he was of sound mind and capable of undergoing trial. He was then charged with the offence of murder. The accused gave unsworn testimony in his defence. In brief his evidence is that on 10.5.2016 as he was delivering his milk at 7.30am, he noted of his two brothers David Kamzee and the deceased quarrelling. They were quarrelling over a foot path. He did not concern himself with them but went his way. Later he was called by his father, the PW-4 in this case, who was in company of other persons. He was told his brother Barnabas (deceased) has passed on. He asked what happened to him and he was told he took beer, coughed and fell on the fence. Since his (accused's) wife was expectant, he was not allowed to see the body and even to attend the burial. After 3 months he was arrested. He denied that he's the one who killed his brother. He alleged that they had not quarreled and he's the one who took care of him when their mother died.

I have weighed the evidence by both sides in this case and I do find it an open-and-shut case. There is ample, vivid and credible evidence by PW-1, PW-2, PW-3 and PW-4, who are all relatives of the accused and eye witnesses to the incident, that it is the accused person who stabbed his brother to death. The accused was not provoked in anyway by the deceased as he was not part of the deliberation of which involved the deceased, PW-3 and PW-4. It's out of past conflict and grudge that he attacked the deceased with a club and after the deceased ran away, chased after him and stabbed him 3 times, killing him. The accused had malice aforethought. He intended to kill the deceased. He told PW-3 to let them kill each other as he (the accused) he's the one who'll cry as they were children of Cheronges. PW-2 also said the accused said he will kill the deceased and his wife, prompting PW-2 to escape into the forest. The accused also told PW1 when he was trying to assist the deceased that they should cook rice, bury the body and won't get him. His utterances after the incident and his act of hitting the deceased's with a club on the head, chasing at him as he tried to escape, and stabbing him three times when he caught up with him, fits properly the definition of malice aforethought as defined under **Section 106 of the Penal Code**. The requisite *mens rea* for the offence of murder is established beyond reasonable doubt.

The accused defence cannot be true. He could not have been fixed by five family members, his father inclusive, if he had not committed the offence. In his lengthy defence he avoided the truth that he committed the murder and went underground in Kapsabet where the police got him 3 months after. He could not attend the death of his own brother, whom he killed. His defence is flimsy and of feather weight if any, in credibility. It's thus rejected.

The bottom line is that the offence of murder is well proved by the prosecution, against him, beyond

reasonable doubt. He stands convicted of the offence under **section 203 as read with section 204 of the Penal code.**

Judgment read in the presence of M/S Chebet for the accused person and M/S Kiptoo for the state this 31st day of October, 2017.

S. M. GITHINJI

JUDGE

31.10.2017

MS KIPTOO

I don't have his records. He can be treated as a first offender.

MS CHEBET IN MITIGATION

The accused is a father of 8 children who depend on him. The wife was chased out of the matrimonial home and have nowhere to feed the children. The accused is a first offender. He is remorseful and I pray for leniency.

COURT

I have considered the circumstances under which the offence was committed, aired mitigation and provisions of section 204 of the Penal Code. The convict is sentenced to death as the law provides. Right of appeal 14 days.

S. M. GITHINJI

JUDGE

31.10.2017