

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL CASE NO. 20 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES CHERUIYOT.....ACCUSED

JUDGEMENT

1. The accused is charged with the murder of Selina Chepkurui, which is contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya. He pleaded not guilty.

The state called 8 witnesses in support of the murder charge.

2. The accused was cohabiting with the deceased. In the night of 4/2/2013, the children of the deceased screamed, among them, Winnie Cherotich (PW 3). PW 3 testified that she saw her deceased mother and the accused quarreling over money for a period of 1 hour. She then saw them fight and the accused stabbed the deceased with a knife on her back. The accused was unable to stab her again as her mother pushed him out of the room and locked herself in a chair and said: *"I have been stabbed."* Under cross-examination, she testified that it is not the deceased who had the knife. She was able to recognize her mother and the deceased because there was a burning solar lamp. The accused escaped from that home and went to his home in Sotik.

3. As a result of the screams from PW 3, a neighbour Joseph Kosgei [PW 1] heard the screams and rushed there. Upon arrival, he heard the children of the deceased saying that mother had been stabbed by the accused person. He found the deceased on a sofa set. According to PW 1, the deceased appeared to have died. After this incident, the accused escaped from that home. Police were informed and No. 73016 PC Peter Rubia (PW 2) went to the scene of crime. He found the deceased bleeding from her nose and mouth. He also saw a stab wound at the back between the 2 shoulders. Furthermore, there was evidence of Cpl Charles Chamwada (PW 8), who similarly went to the scene of crime. He also saw a stab wound on the back. He was told that the accused and the deceased were fighting over money which were the proceeds of sale of chang'aa by the deceased.

4. The body of the deceased was taken to Longisa Hospital Mortuary. Doctor Mutai Kiplangat performed a post mortem examination on that body. He found that the deceased was a female African aged 38 years old. He found that the deceased was bleeding from the mouth and the ear and he also found a stab wound at the upper part of the back. As regards the respiratory system, he found that the left lung had collapsed due to a penetrative injury. There was a similar injury at the left side of the heart. In respect of the head, he found blood oozing from the mouth and ears with a protruding tongue. In the doctor's opinion, the cause of death was excessive hemorrhage due to a penetrative injury on the heart and left lung.

5. Upon being put on his defence, the accused made an unsworn statement. He called Samuel Kipngetch (DW 2) as his defence witness. It was his testimony that he was drunk. He further testified that the deceased had a knife when they were fighting. It was also his testimony that he left the home of the deceased and went to his home in Sotik. Upon arrival at his home, he told his brother, Samuel Korir that he had fought with the deceased. Finally, he testified that he surrendered at Sotik Police Station because he wanted peace.

6. Samuel Kipngetch (DW 2) testified on behalf of the accused saying that the accused called him to his

home where they threshed beans. They then took some of the beans to the deceased who was drunk. He further testified that the accused did not drink alcohol. His further testimony was that he did not know whether the accused and the deceased were drunk or not. Under cross-examination, he admitted that there was no grudge between the accused and the deceased person.

7. I have considered the prosecution and the defence evidence. I find that the deceased and accused cohabited. I also find that the deceased and accused were in the house of the deceased on the material night. I find that they were fighting over money which were the proceeds of sale of the chang'aa. I believe the evidence of Winnie Cherotich that she saw the accused stab the deceased on the upper back with a knife, which knife was not recovered.

8. In the circumstances, I find that it is the accused who inflicted the fatal stab wound that caused the death of the deceased. This is confirmed by the evidence of Doctor Mutai Kiplangat who conducted a post mortem examination on the body of the deceased.

9. I do not believe the evidence of the accused that he merely fought with the deceased. His suggestion that it was the deceased who had the knife was denied by PW 3. I also do not believe the evidence of his witness Samuel Kipngetich (DW 2). DW 2 admitted that he was not at the scene of crime when the deceased and accused were fighting.

10. The issue that falls for decision is whether the accused in stabbing the deceased had the intention to murder her. I find from the evidence that the accused and deceased quarreled and fought over money which were the proceeds of sale of chang'aa. It is in that process that the accused fatally stabbed the deceased on the upper part of the back. I also find that both the deceased and the accused were drunk. I further find that the deceased and accused were on friendly terms. In those circumstances, I find that the offence proved is one of manslaughter contrary to section 205 of the Penal Code.

11. In the light of the foregoing, I find that the offence proved is manslaughter. I therefore find the accused guilty of manslaughter. And for that reason, I hereby convict him of the offence of manslaughter contrary to section 205 of the Penal Code.

Judgement delivered in open court this 16th day of November, 2017 in the presence of Mr. Mukofu for state and Mr. Kiptoo for the accused.

J. M. Bwonwonga

Judge

16/11/2017