



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

HIGH COURT CRIMINAL CASE NO.4 OF 2012

REPUBLIC..... PROSECUTION

VRS

KIPROP KERICH EZRA ACCUSED

JUDGMENT

1. **KIPROP KERICH EZRA** referred to as the accused stands charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars being that the accused on the 12th day of January, 2012 at Mortgage estate in Kericho District within the Rift Valley Province, murdered Zeddy Chemutai.

He is also charged with the offence of attempting to kill himself by stabbing himself on the throat using a kitchen knife.

2. The prosecution called six (6) witnesses. PW1, **Caroline Chepkurui Kilel** and PW2, **Ida Cheptoo** were staying with the deceased in a one roomed house in Mortgage Estate Kericho. They had stayed together for one (1) year. The three ladies were students in two different institutions of higher learning within Kericho town.

3. PW1 and PW2, knew Ezra (the accused) very well as a boyfriend to the deceased though they had differed. On 12th January 2013 at around 1.00 p.m they (3 ladies) had eaten lunch. The deceased told them, she had received a call from the accused and it appeared he was in a vehicle coming to their house. She told them she wanted to go and hide at her uncle's place. Her uncle Andrew Soi lived within Mortgage estate, Kericho.

4. The deceased left the house leaving PW1 and PW2 behind. At about 4.00 p.m the accused arrived and asked for the deceased. PW2 told him she had gone to her uncle's house. The deceased's brother Cheruyoit (PW3) used to stay on the same plot with the three ladies. His house was about 15 metres from theirs. They checked and saw the door to PW3's house open. Inside was the deceased, accused and PW3. The two ladies passed by and greeted them.

5. After greetings they left and went to the house of the next neighbour called Erick. Both Erick and his wife Vicky Chebet were not in the house. The houses of the 3 ladies, Eric and PW3 were all made of iron sheets i.e the roof and the walls. It was therefore easy to hear people speaking in the next house. While in Erick's house PW1 and PW2 heard PW3 say he was leaving. They then heard him leave.

6. Shortly thereafter they heard the noise of utensils and the deceased screamed calling PW2. She said:

“Cheptoo I have been stabbed. Come and help me.”

7. They screamed and rushed to PW3's house and found it closed. PW2 called PW3 on phone. Neighbours came and stood around the house while others peeped through the window. PW3 arrived and the door was forced open.

8. PW1 did not enter the house because of fear and so she took off. PW2 entered the house and found the deceased's body lying on the floor. The accused lay next to her. The deceased had a stab wound on her neck and left cheek.

9. The accused had a cut on his throat. Blood was flowing toward the door. PW2 ran out as she was scared. The reason the deceased and the accused had differed was because the accused had insisted on marrying her but she wanted to finish her studies first.

10. PW3, **Cheruyoit Kirui Robert** stated that, on 12th January 2012 at 1.00 p.m he was in his house at Mortgage Estate having a siesta when her sister (now deceased) came to see him. He gave her a gospel C.D to listen to as he rested. He then received a text message asking him to go to Kabianga University.

11. As he left after 3.25 p.m the deceased pointed to him that the accused who was coming. He knew the deceased and welcomed him. Shortly thereafter, PW1 and her room mate came and greeted them and left. He then left behind the accused and the deceased.

12. While at Equity Bank, he received a phone call from PW2 asking him to rush back because his sister was being killed in his house. He rushed back and found many people gathered at his house. On peeping through the window, he saw the deceased and accused lying beside each other in a pool of blood.

13. The witness and a member of the public forcefully opened the door which had been closed from inside. He was the first to enter the house. He found the deceased's throat slit and blood was oozing from the mouth and throat. The accused was lying as though dead. His kitchen knife (EXB1) was on the floor. He lost consciousness on seeing what had happened.

PW6, **C. I. Abdirahaman Mohammed** was called and informed of what had happened. He identified the clothes worn by the deceased as EXB2 & 3 while those worn by the accused were EXB4 & 5.

14. PW4, **Richard Kipkirui Langat**, the deceased's father was one of those who identified the deceased's body. PW5, **Dr. Edwin Koskei** produced the post mortem report on behalf of Dr. Asha Sigei who had conducted the post mortem.

15. The following were the findings by the doctor:

a) External Examination

- Cut wound in axillary region 9 cm. It exposed the 9th rib.
- Cut wound on the neck exposing the trachea.
- Cut wound on posterior neck triangle.
- Cut wound on anterior neck triangle.
- Superficial cut on the chin.

b) Internal Examination

- Cut wound on the larynx.

- Blood in the chest cavity. (2L)
 - Collapse of the left lung.
 - Two cut wounds on left diaphragm.
 - Bleeding around the heart.
- Cut wound 4 cm to the spleen, blood in the abdominal cavity. She found the cause of death to be due to multiple injuries (EXB 6). A sharp object was used to inflict the injuries.

16. PW6, **C. I. Abdirahaman Mohammed**, the O.C.S., Kericho received a distress call on 12th January, 2012. He rushed to the scene behind Hass Petrol Station area with other police officers in the station vehicle. They were directed to a specific house which was locked from inside. They forcefully opened the door and found blood on the floor and two people lying on the ground. They were male and female. The female was dead and the body had several stab wounds. The scene was photographed (8 photos – EXB6).

17. The male person who is the accused was rushed to the hospital and discharged after two days. He was examined and found fit to stand trial (EXB8 C). Collected from the scene was a blood stained knife (EXB1), and the blood stained clothes EXB 2 - 5.

18. The accused in his unsworn statement stated that he used to work as a guard with Smart Guard Security Firm. He said that on 12th January 2012 at 10.00 a.m he was at the river when he received a call from the deceased. She wanted them to meet for a talk. She insisted on the meeting and he decided to come to Kericho from Bomet to see her.

19. He proceeded to a house near Kericho Primary School and found the deceased and her brother, cousin and a friend. He was received. The deceased's brother left for town. The deceased then escorted the others.

On returning, she locked the door and told him she had made several calls to him and he was not picking. She demanded to know from him where he had been and which prostitute had been with him. He did not answer.

20. She then took a kitchen knife from a basin on the floor. She stabbed him on the neck and also cut him on the left hand. He was not sure if he took the knife after being stabbed. He remembers losing consciousness and regaining it in hospital.

21. After he recovered, he was told he had done something bad. He had no grudges with the deceased. The defence counsel did not make any submissions at any stage of the proceedings.

This is now the case before court for determination.

22. The first count the accused faces is a charge of murder contrary section 203 as read with section 204 of the Penal code. Section 203 of the Penal Code defines murder as follows:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

For a charge of murder to be proved the following must be established:

- **The fact of death.**
- **The act of killing (*actus reus*)**
- **The intention/malice aforethought (*mens rea*).**

23. All the witnesses have confirmed the fact of death. Photos (EXB7) were produced. PW5 produced a post mortem report confirming the injuries and cause of death, (EXB6).

24. The next issue for determination is whether the accused is the one who killed the deceased. PW1 and PW2 saw the accused, deceased and PW3 in the latter's house. They even went and greeted them as is confirmed by PW3 and the accused in his defence. It has been confirmed by the same witnesses that they all left and the deceased and accused were left in PW3's house.

25. While in that house and while PW1 and PW2 were in the house next door, the deceased called out PW2 saying she had been stabbed and needed help. She never spoke again. Those who went to her rescue found the door locked from inside and it had to be forced open.

26. Accused states in his defence that in fact it is him who was attacked by the deceased who picked up a knife from PW3's house and stabbed him on the neck and hand. He therefore claims he does not know if he touched the knife as he became unconscious. PW6 has confirmed that the accused was rushed to hospital and was discharged after two days. It is clear he did not suffer any serious injuries.

27. There is no evidence that after PW3 left the accused and deceased in his house, they were joined by anybody else. The door was locked from inside and was forcefully opened by those who responded to the screams of PW1 and PW2. The murder weapon was found lying on the floor.

28. The only person who was with the deceased was the accused. He was the last person who was seen with the deceased alive.

29. I do find that the accused is the person who inflicted the fatal injuries on the deceased. The cut on his neck must have been by himself.

30. The next issue for determination is whether the killing was premeditated. Section 206 of the Penal Code defines malice aforethought as follows:

“206. Malice aforethought shall be deemed to be established by Malice aforethought.

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;

(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.”

31. PW1 and PW2 who lived with the deceased in the same house knew of the relationship between the accused and deceased. The two had been dating for a while but they had differences explained by the two witnesses.

32. On the material day, the deceased told them that the accused had called and it was like he was in a motor vehicle coming to their house. She did not want to meet him and so took off. She had told them she was going to her uncle's house within the same estate. It however, turned out that she went to her brother's house (PW3) who lived within the same estate.

33. The accused person does not deny having talked with the deceased on phone that day. His version however, is that it is the deceased who was insisting that he comes to Kericho for a talk. This cannot be

true considering what the deceased had shared with her friends (PW1 and PW2) concerning their relationship. She left the house that she knew he would come to. She was running away from him. She did not want to meet him.

34. Indeed, he came looking for her there. From there, he came to PW3's house and found her there. According to his defence, it is the deceased who injured him but he did not do anything to her as he became unconscious. This can not be true. The injuries inflicted on the deceased were so many. She had five (5) external and several internal injuries. She was not armed.

35. She did not leave her house with any weapon. She had gone to see her brother (PW3) when all these happened to her. The accused travelled all the way from Bomet to Kericho uninvited. He knew what he was after. The injuries inflicted on the deceased were so vicious and too many. It was not an accident and the accused knew that these injuries would cause grievous harm or death.

36. In the Case of **Langat V R [2002 2 KLR 197 para. 30 – 35 the Court of Appeal** dealt with the issue of *mens rea* and stated thus :

“The attack on the deceased was vicious and the injuries he sustained were severe. A lethal weapon was used. The injury on the deceased's eye was isolated and considering what he said happened to him vis-a-vis the injuries on the deceased's body and himself, this was a case of premeditated attack, and it matters not what test, subjective or objective, one employs to consider the appellant's conduct. He had earlier the same day threatened to kill Birir if he dared to cultivate the land the deceased had leased to him. The appellant was clearly unhappy with his father and was prepared to go any length to stop Birir from working on the said land.”

In the present case the accused and deceased had differences in their relationship which is quite normal. He was just a boyfriend and has not in any way claimed she had left him for somebody else. From the way he butchered this girl, it is clear what his intention was. To finish her.

37. It is not true that the superficial cut he had on his neck was inflicted by her. He must have tried to take away his life after realising he had indeed killed her.

38. After considering all the evidence adduced by the prosecution and the defence, I am satisfied that the prosecution has proved its case against the accused on both counts beyond reasonable doubt. For my part, I find the accused guilty and I convict him on both counts accordingly.

Signed, dated and delivered this 15th day of March, 2016.

H. I. ONG'UDI

JUDGE

In the presence of:

M/s Keli for State

M/s Maritim for accused

Accused person and Mr. Kenei as Court Assistant.