



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO 8 OF 2016

REPUBLICPROSECUTOR

VERSUS

WESLEY KIPRONO TERER.....ACCUSED

JUDGEMENT

WESLEY KIPRONO TERER herein after referred to as the accused is charged with two counts of murder under section 203 as read with section 204 of the penal code.

The particulars in the first count are that on the 24th day of April 2016 at Kuriot village in Sotik-Bomet County he murdered JOSEPH KIPTERER LANGAT.

In the second count the particulars are that on the 24th day of April at Kuriot Village in Sotik-Bomet County he murdered CAROLINE CHEPKORIR LANGAT.

The prosecution in this case called 9 witnesses in support of their case with the defence calling one (accused)

Brief facts

The two deceased persons Joseph Kipterer Langat and Caroline Chepkorir Langat are the parents of the accused.

It is the prosecution case that on the fateful day of 24th April 2016, the accused went home at 5.30 pm looking very agitated and took off his shirt and bellowed to the effect that he was going to kill somebody.

He found his two sisters Veronica (PW1) and Naomi (PW2) plaiting their hair in the house compound. His father was resting at the kitchen. His mother was outside and she inquired from him as to what was the problem. The accused had at that juncture entered into his house and emerged armed with a hoe. It is this hoe which he swung and cut his mother with on the hand nearly severing it. His mother rushed into the kitchen where her husband was resting and locked herself.

The accused followed and forcefully opened the door. His sister Veronica (PW1) and Naomi (PW2) did testify to have seen their father crawl out of the kitchen with the accused on top while armed with the hoe and they observed the accused hit his father with the hoe whose wooden handle broke. He went and fetched an axe and used it on hacking his father.

The two sisters ran away screaming for help. Members of the public proceeded to the scene and disarmed

the accused who was still at his compound cutting him with the axe.

Police were called and the victims were taken to the hospital where they were pronounced dead. The accused who had been beaten by members of public and left for dead was taken to Hospital and was admitted. Later when he recuperated he was taken to police station and was later arraigned in court for the two charges of murder.

In his defence the accused in his unsworn statement testified to have received information that his uncles were fighting with his father over a land dispute. He proceeded to the scene and fought his uncles after finding that they had killed his father. Later he was arrested by police and charged with the offences now facing him.

The law

The offence of murder is defined under section 203 of the penal code.

Thus-; “any person who of malice aforethought, causes death of another person by unlawful act or omission is guilty of murder.

Section 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 or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by a difference whether death or grievous bodily harm is caused or not or by 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.

Analysis and evaluation

It is the contention by the defence that the two sisters PW1 and PW2 did not actually see what transpired between the accused and their parents because immediately the accused went home shouting and threatening them they ran away and did not see what happened in the kitchen where their two parents were allegedly attacked.

It is further contended that there were flower bushes in the compound and these obscured their view and they could not observe the happenings at the other end.

The issue of the death of the two deceased persons is not in dispute. It is not in dispute as regards the nature of injuries sustained and the cause of death.

Doctor Mutai Kiplangat (PW8) who performed the postmortem examination on the body of caroline Langat formed the opinion that the cause of death was

Cardio-respiratory arrest due to severe head injury and massive hemorrhage following assault with a sharp object.

As regards the second deceased Joseph Kiplangat Langat he formed the opinion that the cause of death was Cardio-respiratory arrest secondary to gross brain damage, massive blood loss and multiple cut

injuries following assault with a sharp object.

The evidence by PW1 and PW2 is to the effect that the accused was armed with a hoe and an axe and that these two were the murder weapons. These two were later identified in court and produced as exhibits No. 4 and 5 for the prosecution.

The axe and the hoe are by nature sharp objects and the wounds and injuries inflicted on the bodies of the two murder victims were caused by sharp instruments as per the doctor's opinion. This is consistent with the evidence adduced by PW1 and PW2.

A neighbor of the murder victims Mathew Rono (PW6) did testify to have been attracted to the scene by screams and upon arrival met the accused who was armed with an axe. He was shirtless. He was very violent and was threatening to kill anybody who went near him. He was still inflicting cut wounds on his father, members of public gained access to the Kitchen and picked Caroline Langat and she was taken to Hospital, she had injuries on the right hand.

Another Neighbor Richard Kipkirui (PW5) was called by phone and informed that there were screams emanating from the home of the murder victims, before arriving at the scene he saw the accused armed with an axe, he was threatening members of public with it but they managed to disarm him. The body of his father lay lifeless nearby. Caroline was taken to Hospital where she was later pronounced dead.

This attack took place in broad day light. The accused is the son of the murder victims. He was clearly seen by his sisters PW1 and PW2 attacking his parents with a hoe and an axe.

Their evidence is corroborated by their neighbors PW3, PW4, PW5 who found the accused at the scene of murder still armed with an axe which he had used to hack his parents with.

The body of his father was still lying on the ground next to him. His mother was picked from the kitchen nearby where she was found seriously injured.

The accused had the intention of killing his parents.

His Sisters PW1 and PW2 heard him state that he was going to kill somebody and taking off his shirt he proceeded to arm himself with a hoe and an axe.

The nature of the wounds inflicted on the murder victims which were compound fractures of the skull and upper limbs on both victims do indicate that he intended to cause death or grievous harm on them. His acts were premeditated deliberate and intended.

I am satisfied that the prosecution has proved all the ingredients of the charge of murder. It has been proved beyond reasonable doubt that the accused murdered the deceased in counts No.1 and 2 respectively.

He is found guilty of murder under section 203 of the penal code and is convicted accordingly under section 322 of the criminal procedure code.

Judgment delivered dated and signed this 5th day of October 2016 in the presence of learned counsel for the prosecution Mr. Kiptoo

Learned counsel for the defence Mr. Koske

Court assistant Martin/Byegon.

M.MUYA

JUDGE

5/10/2016.

Mr.Kiptoo

The accused may be treated as a first offender. We do not have his previous records

Mr.Koske

Mitigation

The accused is young man of 23 years. He is unmarried. He is a first offender. He is apologetic of what he did. He has been in prison for the last 4 months. He has embraced Christianity. He was under influence of alcohol and cannabis bang. He says that he was not himself. He was highly intoxicated. He is humbly praying for leniency. He is praying for a non custodial sentence. He committed the offence without knowledge and intention he has now come to terms with the offence. He has now changed. He has decided not to take drugs. He will not repeat the offence again.

Court

Probation report to be availed before sentence on 31/10/16.

31/10/2016

Coram

Before –Hon Martin Muya - Judge

Weldon- C/A

Gitahi - for state

Mrs.Kiptoo for the state

Koske for the accused

Probation officer report is ready.

Court

Production order to issue

Mention 2nd Nov.2016

M.MUYA

JUDGE

31/10/2016

Mr. Koske for the accused.

The accused is now before the court.

Sentence

The court has taken into consideration mitigating factors adduced by state counsel on behalf of the

accused and the probation report which is not favorable. Its noted that that the accused killed both his parents.

The accused is sentenced to suffer death as provided by law.

M.MUYA

JUDGE

31/10/2016