



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 12 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ABRAHAM KIBET CHEPUKWA.....ACCUSED

J U D G M E N T

1. The accused, Abraham **Kibet Chepukwa**, is charged with murder, contrary to Section 203 read with Section 204 of the penal code, in that on the **7th April, 2011**, at Kamaram Village Chepsiro Trans-Nzoia County, murdered **James Kibor Kibet**.
2. The case for the prosecution was based on the facts that the deceased was a brother of the accused and on the material date they seemed to have disagreed over a piece of land and engaged in a quarrel which led to a physical confrontation in which the deceased suffered fatal injuries.
3. **Lilian Tenai (PW1)**, heard them quarreling and noticed that the accused was holding an axe (P. Exhibit 1) and threatening to kill the deceased. She was a few metres from them. She could not see them but noticed the axe when she saw the accused running away and remarking that he had killed. She saw the deceased on the ground bleeding from the head.
4. **Samson Koech (PW2)**, had leased a portion of land from the accused. On the material date, he heard the deceased shouting and threatening to shoot somebody with arrows. He (PW2) feared for his life and left the scene only to return later and find the deceased and the accused fighting. In the process, the accused slashed the deceased with the axe in his possession. He (PW2) screamed for help and people appeared at the scene. The accused left the scene but the deceased lay on the ground with injuries.
5. **Maurice Chepkoech (PW3)**, wife to the deceased, arrived home at about 6.00 pm and found the deceased in a low mood and appearing annoyed. She went to a nearby trading centre and upon her return home heard screams. The deceased was not at home at the time but she found him at their farm lying on the ground and with a serious head injury. He was dead.
6. **Benjamin Kipchumba (PW4)**, a nephew to both the deceased and the accused identified the body of the deceased for post-mortem purposes while the investigating officer in this matter, **Cpl. John Maelo(PW5)**, produced the necessary post-mortem report (P. Exhibit 2) without objection from the accused. The report indicated that the cause of the death of the deceased was severe head injury due to cut wound. He (PW5) indicated that the investigations revealed that the accused and the deceased had fought over a land dispute leading to the deceased being fatally assaulted with an axe by the accused.
7. In his defence, the accused denied the charge and indicated that the deceased was his elder brother. Their father died in **1997** and both lived with their mother who divided their father's ten (10) acres piece

of land to her four sons including themselves. He (accused) leased his two (2) acres to Kemboi (PW2) with whom he was with on the material date at about 6.00 pm at the leased land. It was then that the deceased appeared there while armed with a bow and arrow and angry over leasing of the land by Kemboi. He (accused) sensed danger and fled from the scene leaving the deceased and Kemboi arguing.

8. He (accused) thereafter heard screams of a cousin. He did not bother to enquire even as the screams escalated. He went to his home and was arrested on the following day on allegations that he had killed his brother. He did not kill his brother and had no weapon when he went to assist Kemboi in the leased farm.

9. From all the foregoing evidential facts, it was not in dispute that the deceased died as a result of fatal head injuries inflicted upon him by a dangerous object which was an axe (P. Exhibit 1). It was apparent that the person who inflicted the injuries acted unlawfully using excessive force which effectively put to an end the life of the victim. But, the assailant could not have killed the deceased out of malice aforethought.

10. The basic issue for determination was therefore whether the accused was that assailant and from the evidence of Lilian (PW1) and Samson (PW2), he was indeed the culprit despite his denial in defence which was effectively discredited.

Lilian, heard the deceased and the accused shouting at each other. She heard the accused threatening to kill the deceased and minutes thereafter saw the accused running away holding the murder weapon which he dropped down.

11. Samson, heard the deceased shouting that he would shoot somebody with arrows. He (Samson) feared for his life and left the scene briefly. Upon his return; he found the deceased and the accused fighting. It was then that the accused slashed the deceased with the axe which he (accused) had.

The element of a quarrel followed by a fight between the deceased and the accused was a clear indication that the intent to kill was lacking in the accused's unlawful act even though he used a dangerous weapon and excessive force in the fight.

12. The motive for the unlawful act may well be deciphered from the evidence of the two key prosecution witnesses (PW1 and PW2) to have been a land dispute involving the deceased and the accused but in which Samson (PW2) was sucked into due to leasing from the accused the material portion of land.

13. The defence by the accused portrayed him as a person who was the victim rather than the villain but the evidence by the prosecution indicated otherwise and rendered the defence nothing more than an afterthought and a pack of lies.

The prosecution has proved beyond reasonable doubt that the accused was indeed the person who unlawfully assaulted the deceased and caused him fatal injuries.

14. Consequently, the accused is hereby found guilty for manslaughter contrary to Section 202 (1) of the penal code and is accordingly convicted.

J.R. KARANJA

JUDGE

[Delivered and signed this **16th** day of **June, 2015**]