



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 42 OF 2012

REPUBLIC.....PROSECUTOR

-VERSUS-

GEOFFREY KIPKOSGEI KOROS.....1ST ACCUSED

BERNARD CHERUIYOT KIPLANGAT.....2ND ACCUSED

JUDGMENT

1. The two accused persons were charged with the offence of **murder** contrary to **Section 203** as read together with **Section 204** of the **Penal Code**. The particulars of the offence as per the Information dated 4th September, 2012 were that on 6th April 2012, at Sirikwa in Kuresoi District within Nakuru County the two accused persons jointly murdered Peter Kipkorir.
2. The Prosecution called a total of five witnesses. **PW1**, the deceased's wife, testified that on that fateful night the deceased came home together with one David at about 9.00 pm. Shortly thereafter, about five men came to their house and started banging on the doors and roof and managed to break down the door.
3. **PW1** went to the door and using the light from the torch she was carrying she was able to see the 2nd accused standing outside, carrying a bow and arrows. She knew the 2nd accused well prior to this incident and identified him on the dock. **PW1** asked the 2nd accused what the problem was but he did not respond. Thereafter, the deceased ran out of the house and she heard the 2nd accused say, "that is him".
4. The deceased fled to a **PW2's** house. The gang of five men and **PW1** pursued him there. They demanded that **PW2** should release the deceased. **PW2** tried to plead for the deceased's life but to no avail. He eventually asked the deceased to surrender to his friends. When she heard this **PW1** went back home as she could not be able to witness what was about to happen. She returned to the scene the following day to find the husband lying behind **PW2's** house with an arrow in his neck and injuries on his head. The deceased was taken to Molo District Hospital where he died.
5. **PW1** testified that she saw the 1st and 2nd accused but the other men had covered their faces. The 1st accused person told her that her husband would not survive that day. She knew him well prior to the incident.
6. **PW2** was the deceased's neighbor. He knew the 1st accused as the deceased's friend and identified him on the dock as the one wearing a black jacket. On the material night, he was at home with his family when the deceased and the 1st accused barged into his house. He was able to see them from the light from the television set. The 1st accused was carrying a bow and arrows. There were some men outside asking **PW2** to release the deceased. The 1st accused threatened **PW2** not to interfere

- or he too would be dealt with. The 1st accused left with the deceased and locked **PW2's** house from outside. **PW2** stated that he heard a commotion outside for a short time and then silence. He was rescued the following day at about noon by some neighbours. They found the deceased lying behind his house.
7. In cross examination the witness clarified that although he indicated in his statement to the police that he went outside when he heard a commotion, the position is that the deceased and the 1st accused actually entered into his house. He also explained the television set is about 10 metres away from the door. He retreated and agreed to the demands of the 1st accused when he saw the arrows. He however did not see the 2nd accused person.
 8. **PW3** was the deceased's brother. On 7th April, 2014, he was informed that the deceased had been attacked. When he went to Molo District Hospital where the deceased had been admitted, he found that he had already died. He noticed head injuries possibly inflicted by a *rungu* and arrow wounds on the body of the deceased. **PW3** did not know any of the accused persons and could not identify them as the persons who killed the deceased.
 9. **PW5** was the investigating officer, testified that the accused was arrested on different occasions and brought to the station by the officers from Sirikwa Police Station. According to his investigations, the deceased had fought with one of the accused persons and that his death was an act of revenge. He concluded that the accused persons were involved in the attack against the deceased.
 10. **PW6** conducted the post mortem on the body of the deceased and produced the report which was marked as "**PEX 1**". When he examined the deceased, he found that he had injuries on his head, chest, internal abdomen, and lower limbs. These injuries were inflicted by both sharp and blunt objects. However the injuries inflicted by the blunt object caused his death. He opined that the cause of death was the severe head injury secondary to trauma.
 11. The court found that the Prosecution had established a *prima facie* case against the accused persons and put them on their defence.
 12. The 1st accused gave a sworn statement. He testified that on 6th April, 2012 he was at his mother's house at Kaptembwa from noon to around 3.00pm. When he returned to his home, he was informed that there had been a robbery and the thief had managed to flee with the cow. Three months later, he was arrested and the arresting officer informed him that it was on account of the stolen cow. However, he was charged with this offence. It was his testimony that he did not know the deceased or his co-accused prior and denied committing the offence.
 13. In cross examination the 1st accused admitted that he had made a statement in the police station but only after being beaten severely and could therefore not recall what he had said.
 14. The statement was read out to him by the prosecutor. In it he stated that his co-accused called him on his mobile phone and informed him that he had been beaten by the deceased. To exert revenge, the 2nd accused gathered some men including the 1st accused, and they attacked the deceased with arrows. The 1st accused admitted that he attacked the deceased but stated that he only hit him once. After the statement was read to him in court, the accused person stated "*ni hivyo*".
 15. The 2nd accused also gave sworn testimony. He could not recall exactly where he was on the day the deceased was attacked. However he did not know the deceased or any of the prosecution witnesses. Prior to their arrest, the 2nd accused last saw the 1st accused in 2011 before he relocated with his parents. The 2nd accused denied having committed the offence with which he had been charged.

DETERMINATION

16. Counsel in this case opted to rely on the evidence on record and did not make any further submissions. The issue for determination is whether the accused persons committed the offence of murder as charged.
17. The offence of murder is defined by **Section 203** of the **Penal Code, Cap 63, Laws of Kenya** as follows-

"Any person who of malice aforethought causes death of another person by an unlawful act or

omission is guilty of murder.”

18. The prosecution therefore is required to tender sufficient proof of the following three crucial ingredients in order to establish a charge of murder-

- (a) the fact and cause of death of the deceased person;
- (b) that the death of the deceased was as a result of an unlawful act or omission by the accused persons; and
- (c) that such unlawful act or omission was committed with malice aforethought.

19. The fact and cause of death of the deceased was proved by the prosecution. **PW6** who carried out postmortem on the deceased found injuries on his head, chest, abdomen and limbs. He was of the opinion that these injuries had been inflicted by both sharp and blunt objects. The severe head injury secondary to trauma, and which had been inflicted by a blunt object, was the cause of the deceased's death.

20. The question that then follows is whether the evidence established that it was the accused persons who inflicted these fatal injuries on the deceased. Neither **PW1** nor **PW2** saw the accused persons beating the deceased. **PW1** testified that when the men came to their house, the deceased was able to run to **PW2**'s house where they pursued him. **PW2** also did not see the men who attacked the deceased as once the deceased was retrieved from his house, he was taken outside and **PW2** was locked in. Although he heard a commotion outside he did not see what transpired. Nonetheless, the only conclusion that can be made from the evidence is that it was these men who attacked the deceased because after he was released to them that night, he was found beaten the following day.

21. I am also satisfied that the two accused were among these men. **PW1** identified the 2nd accused, whom she had known as the deceased's friend, as one of the men. She said that she saw him outside using the torch from her light and actually shouted his name and asked him what the problem was. She also heard him identify the deceased when he ran out of the house to the other men. She said that the 2nd accused and the gang chased the deceased to **PW2**'s house.

22. Her evidence identifying the 1st accused was not as clear. Nonetheless, the 1st accused was properly identified by **PW2**. He said that the deceased and the 1st accused charged into his house that night. He was able to see them by the light from the television. He recognized the 1st accused as the deceased's friend and saw that he was carrying a bow and arrows. He also spoke to the 1st accused who answered back and told him not to interfere. The 1st accused, dragged the deceased outside to the other men who had been calling out for him.

23. The above evidence, established beyond reasonable doubt, that the two accused persons were among the men who attacked the deceased that night. It is not material who inflicted the fatal injury on the deceased. What was pertinent was that the accused persons acted in concert with other persons to commit an unlawful act. On that night, these men went to the deceased's house to attack the deceased and their intention to actually inflict fatal injuries on him is manifested by the fact that they were armed with bows and arrows. It was the 2nd accused who identified the deceased to the rest of the gang. The 1st accused went to retrieve the deceased from **PW2**'s house where he had sought refuge and took him outside. In the circumstances I find that they are both culpable for the attack of the deceased and that his death was as a result of their actions.

24. For the above reasons, I find that the prosecution was able to establish the charges against the accused persons beyond reasonable doubt. I therefore find the accused persons guilty of the **murder** of the deceased, contrary to **Section 203** of the **Penal Code**, and I convict them accordingly.

Dated, Signed and Delivered at Nakuru this 26th day of August, 2015.

A. MSHILA

JUDGE