

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 36 OF 2011

REPUBLIC PROSECUTOR

VERSUS

ERICK KIPRONO SIGEI..... ACCUSED

JUDGMENT

Erick Kiprono Sigai, the accused person herein underwent a trial before this court for the offence of Murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The offence is stated in the information of the Honourable Attorney General dated 8th September, 2011. The particulars of the offence are that on 3rd September, 2011 at [particulars withheld] Hotel in Kedowa Trading Centre in Kipkelion District within the Rift Valley Province, it is alleged the accused murdered **Dominic Kiprotich Langat**.

The Prosecution's case is supported by the evidence of eight (8) witnesses. When the accused was placed in his defence he opted not to testify nor call any witness. It is also important to state from the outset that all the evidence were taken before Lady Justice Gacheche who cannot now sit. Pursuant to the provisions of **Section 201(2)** of the **Criminal Procedure Code** this court proceeded to receive final submissions and proceeded to write this judgment. **R K K (PW1)** a father to the accused told this court that on the fateful morning he left to take money to mama C, 30 metres away leaving behind **Dominic Kiprotich** (deceased) and **Eric Kiprono Sigai**(accused). The duo were carrying out chores in the kitchen of [particulars withheld] Hotel. It is the evidence of PW1 that the deceased was boiling water while the accused was washing dishes. While taking tea with mama C PW1 heard screams prompting him to walk back to his hotel and that is when he saw the accused running without a shirt while being pursued by someone called Wiliwili. On arrival at the hotel, PW1 said, he found the deceased lying down outside the hotel with a stab wound on his back. **Edna Chepkorir Koskei**(PW2) said she saw the deceased walk out of [particulars withheld] Hotel while holding his chest with a knife sticking to his back. PW2 said she screamed and called Wiliwili to remove the knife from the deceased's back. PW2 said the deceased fell down after walking for a few steps. PW2 said she was told by Wiliwili that he had seen the accused run away. Vincent Kipkorir Koech alias Wiliwili(PW3) said that he rushed to [particulars withheld] Hotel when he heard a woman screaming. PW3 said that upon arrival at [particulars withheld] Hotel he found the deceased lying down with a knife sticking on his back. He said he removed the knife and pursued the accused whom he was told had stabbed the deceased but could not catch up with him. PW3 took the knife and handed over the same to Kedowa police station. Dr. Dan Kipang Ndiwa (PW5) did a postmortem on the deceased's body and came to the conclusion that the deceased died as a result of massive bleeding due to penetrating chest injury to the right lung. PW5 confirmed that the alleged murder weapon was never subjected to any analysis. C.I.P Ephraim Kariuki Githinji (PW8) produced the charge and cautionary statement he recored from the accused as an exhibit in evidence. In the aforesaid statement the accused is said to have admitted having stabbed the deceased after he had a quarrel with him. The accused claimed he was demeaned by the deceased when he referred to him as an uncircumcised boy. The accused further admitted in the statement that he ran away after committing the offence.

At the close of evidence learned counsels were invited to make final submissions. Miss Kivali learned prosecution counsel opted not to make any submissions but urged this court to consider the evidence on record. Mr. Ochieng learned advocate for the accused urged this court to find the accused not guilty and proceeded to acquit him. He argued that since there was no eye witness there was no cogent evidence to support a murder charge. Mr. Ochieng further argued that since the murder weapon was not subjected to any analysis it could not link the accused with the offence. After a careful considerations of the evidence and the submissions, I have come to the following conclusion of the matter. In order to prove the offence of murder, two elements must be present. **First**, *actus reus* and **secondly**, *mens rea*. The first question is whether death occurred. There is no doubt the deceased died as a result of a single stab wound. The question is who inflicted the stab wound? It is the evidence of PW1 that he left the accused and the deceased working in the kitchen of his [particulars withheld] Hotel. The accused in the charge and cautionary statement given to PW8 admits he stabbed his brother after he was abused and demeaned by the deceased. I am convinced that there was sufficient evidence showing the accused stabbed the deceased thus inflicting on him fatal injuries. The element of *actus reus* is proved.

The second element which must be established is malice aforethought. In my estimation, I do not think the accused had planed to murder his brother. He acted spontaneously and inflicted a single stab wound which unfortunately became fatal. In the circumstances, I find the accused not guilty for murder. He is however found guilty for the offence of Manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code**. Consequently he is convicted for Manslaughter. The accused and his counsels are hereby invited to submit their facts in mitigation.

Dated, signed and delivered in open court this 20th day of March, 2014.

J.K. SERGON

JUDGE

In the presence of

Mr. Lopokoityit for Director of Public Prosecutions

Motanya holding brief for Mr. Ochieng for Accused

Motanya: I need time to mitigate.

Court – This case is adjourned 7.4.2014 for mitigation. A Probation report from Kipkelion District on the accused is requested to be filed on or before the aforesaid date.

J.K. SERGON

JUDGE