



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Case 111 of 2010**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**RICHARD SIELE.....ACCUSED**

**JUDGMENT**

The accused person is charged that he murdered Joseph Kipkurui Korir (the deceased) on 13<sup>th</sup> April, 2009 at Tritagon village, Nessuit, Nakuru.

There were only two eye witnesses. P.W.1 Erastus Sang Kipkoech, (Erastus) described how the accused went to a local (Panafric) hotel where he (Erastus) worked on the material day. He was served tea and shortly after he was joined by the deceased.

Erastus noticed that the accused was drunk. The deceased and accused exchanged words in a language Erastus thought was *Kimaasai*. The deceased too took some tea and shortly the accused walked out. He was followed by the deceased. Both returned to the hotel after a short while. The exchange between the two appeared heated. Once more, the accused walked out and was followed by the deceased. At this stage, Erastus heard noises from outside and upon coming out, saw the deceased and accused fighting. He saw the accused hit the deceased with a stick on the chest.

Isaac Kiptum (P.W.6) who happened to be at the trading centre at this time corroborated the evidence of Erastus. At a distance of about 100m, he saw the accused armed with a stick chasing the deceased. The deceased fell down and the accused attacked him with the stick striking him twice on the head and other parts of the body.

Dr. Titus Ngulungu produced a postmortem report prepared by Dr. Daniel Mbithi (the doctor). The doctor found that the deceased suffered laceration of the head, Sub-aponeurotic haematoma and a compressed brain damage. In the doctor's opinion, the deceased died as a result of severe head injury secondary to blunt force/object trauma.

The matter was reported to the police, the accused arrested and charged.

In his sworn defence, the accused confirmed that the deceased was his neighbour but maintained that he did not know anything about the charges.

I have considered that evidence.

In a case of murder and in the circumstances of this case, the burden remains with the prosecution to prove, first that it is the accused who inflicted the fatal blows. Second, that the accused person in causing

the death of the deceased had malice aforethought. There were two eye witnesses, Erastus and Isaac Kiptum as noted earlier who have satisfied me that the accused and the deceased were together on the day in question. The two witnesses, no doubt knew the deceased and the accused. The incident took place at about 6p.m. There is no suggestion that there was darkness.

Erastus served the two with tea and noticed they were engaged in an argument. Both Erastus and Isaac saw the accused attack the deceased. The doctor confirmed that the deceased died as a result of head injury due to blunt force, corroborating the evidence of Erastus and Isaac that the accused used a stick to assault the deceased.

On the first limb, I find that the fatal injuries were caused by the accused person. Regarding the second limb – that is, whether the accused person, in attacking the deceased in the manner explained, had malice aforethought as defined in **Section 206** of the **Penal Code**. Erastus categorically stated that the accused was drunk and was smelling of alcohol. This was confirmed by P.W.2, Simon Cheruiyot. It is probable that the accused was not able to recall the events of that day due to his inebriation with alcohol.

Although by dint of **Section 13(1)** of the **Penal Code** intoxication does not constitute a defence, it will, however, be taken into account for the purpose of determining whether the accused was capable of forming any intention to commit the offence charged.

I reiterate that there is evidence that the accused person was drunk. It is also probable that he genuinely did not know what happened between him and the deceased as a result of being drunk. I come to the conclusion that in view of his drunken state, the accused person was incapable of forming the requisite intention, hence had no malice aforethought.

In the event, I find that the charge of murder has not been established. The accused person is however, guilty of **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. He is as a result found guilty of manslaughter and convicted accordingly.

**Dated and Signed at Nakuru this 18<sup>th</sup> day of January, 2013.**

**W. OUKO  
JUDGE**

**Dated, Signed and Delivered at Nakuru this 31<sup>st</sup> day of January, 2013 by Hon. Justice M. J. Anyara Emukule.**

**JUDGE**