

REPUBLIC OF KENYA

High Court at Meru

Criminal Case 58 of 2005

REPUBLICPROSECUTION

VERSUS

ROBERT KOBIA BAARIO.....ACCUSED

J U D G M E N T

The accused **ROBERT KOBIA BAARIO** is charged with murder Contrary to section 203 as read with section 204 of the Penal Code.

The accused person was arraigned in court on the 27th July 2005 and the plea taken on the same day. The accused person was initially tried with the aid of assessors by Hon. Sitati J. in 2006. She was eventually transferred from the station and the case continued by Hon. Ouko J in January 2009. The matter was eventually taken over by myself in 2010 and heard one more prosecution witness and the defence evidence. I ordered a retrial when I discovered in the process of preparing the judgment that Hon. Ouko J and myself had taken over the case and heard it without the aid of assessors. I heard the case afresh on 29th November 2012 and 31st January 2013.

Four witnesses were called to testify in this case. The first witness was Maria Nchoro who was a daughter of the deceased. Her evidence was that on a date she could not recall she was called to her village at Antubangai Village and that when she went there she found her father lying on the ground. He had one leg and one hand completely chopped off and the other leg partly cut. She said that her father told her that he was cut by robbers. She said that she later saw Robert at the Chief's camp where he was being held after the area Chief arrested him. She identified the said Robert as the accused before the court. The 2nd witness was Gervasio Kiberia who was the assistant chief of Athiba Sub location where the incident occurred. His evidence was to the effect that on 23rd May, 2005 he left work at about four PM when he met some youth who called him urgently to go to a scene where somebody had been cut up. Gervasio told the court that he went to the scene and found a huge crowd of people among those people was the accused who was holding a panga. He ordered the accused to put the panga down and apprehended him. He said that he also saw the deceased on the ground and that he was trying to talk but his voice was very weak. He did not hear what he said.

The 3rd witness was Ntaragwi M'Kairi his evidence was that on the material day a person by the name Beatrice Muthoni went to him crying saying that she had left someone who had been cut several times and that she had ran away from the scene. Ntaragwi testified that although he was very weak he decided to walk to the scene. He said that at the scene he found only his brother who was lying on the ground. With his right hand and right leg amputated. He said that it was reported to him that the culprit had been arrested. Later on his niece who is a daughter of the deceased told him that his brother had been admitted to hospital.

The last witness was the investigating officer who took over the case in 2012 eight years after the incident. He produced the postmortem report on the deceased which had been completed by Dr. Ringera showing that the cause of death was cardiovascular failure due to massive respiratory bleeding from major cuts. The investigating officer also produced the p3 form on the accused person also filled by Dr. Ringera whose findings were the accused was probably 18 years old was mentally stable and had no injuries.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF FEBRUARY, 2013.

J. LESIIT
JUDGE