

REPUBLIC OF KENYA

High Court at Kericho

Criminal Case 11 of 2012

REPUBLIC.....PROSECUTOR

-VERSUS-

JOSEPH KIPKORIR MUTAI.....ACCUSED

RULING

1. The accused, Joseph Kipkorir Mutai is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 2nd day of March 2012 at Kaptangwet village in Kembu Location in Bomet District within Rift Valley Province, he murdered Philip Kiplangat Towett.
2. The accused took plea on 11th October 2012 and pleaded not guilty to the charge of murder. Thereafter, the prosecution indicated that it wished to call ten witnesses. The court fixed the matter for hearing on 31st January 2013 and directed that witness summons do issue.
3. Hearing of the case commenced on 30th January 2013 as scheduled. The prosecution called a total of seven witnesses and closed its case.
4. The purpose of this ruling is to determine whether at the close of the evidence in support of the charge of murder against the accused person a case has been made out against the accused person sufficiently to require him to make a defence, as obligated upon this court under Section 210 of the Criminal Procedure Code.
5. I have carefully reviewed the evidence tendered by the prosecution witnesses. PW1 Samuel Kibet Langat testified having been in the company of the accused person when the two met the deceased Philip Kiplangat Towett on the evening of 2nd March 2012 during which he witnessed the accused take out a bolt-studded club and hit the deceased twice in the head before running away. PW2 Boniface Kiplangat Too stated that he reacted to screams from a distance and rushed to the scene of the crime where he found the deceased lying down, bleeding from a wound on his head. He and others took the deceased to Longisa District Hospital. He never accompanied the deceased to Tenwek Mission hospital where he was referred. PW3 Stanley Kiprotich Ngetich is an operator of a motorcycle taxi. He was engaged to take the deceased to hospital after the incident. PW4 Moses Kipirui Sitonik is a brother to the victim. He was called to the scene of the crime and helped take his brother to hospital. He stayed in hospital with the victim until he passed on 4th March 2012. He also witnessed the post-mortem of the deceased's body. PW5 David Kiplangat Kimalel described himself as the Chief Chemalel location. He arrested the accused upon receipt of a report that he (the accused) was the person who had hit the deceased and indeed killed him. The arrest was done at the home of the accused's father. PW5 testified that in the course of the arrest the accused admitted having hit the deceased. He handed the accused to the police at Kapkimolwa Police Station. PW6 Vincent Kamusinga is a medical officer at Longisa District Hospital. He testified on behalf of a Dr. Tonui who had carried out the post-mortem on the victim's body. The post-mortem results showed that the cause of death was a severe head injury caused by a sharp object. He however clarified that the injury could also have been caused by a blunt object depending on the force used. PW7 Newton Gideon Mjomba described himself as the in-charge Kapkimolwa Police Post. He was at the station when

the accused was brought by PW5. He gave orders to an officer to re-arrest the accused. He however admitted that he never took part in the investigations and was hard-placed to explain how the exhibits relating to the deceased clothing and the bolt-studded club came to the police station.

6. Having reviewed the prosecution evidence placed before me, I can make my view as to whether or not the accused has a case to answer.

7. From the evidence, PW1 witnessed the criminal act by the accused first-hand. The blow that was inflicted upon the deceased by the accused was prima facie shown to have been the cause of death as per the post-mortem report. PW5, the Chief who arrested deceased also testified that the deceased had admitted having hit the deceased.

8. On the strength of the evidence tendered by PW1 and PW5, I am inclined to find that the accused has a case to answer for the offence of murder. Consequently, I hereby put the accused to his defence pursuant to Section 211(1) of the Criminal Procedure Code. The substance of the charge shall be explained to the accused and his right to give evidence accorded to him as provided for in the said section. It is so ordered.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 13th DAY MARCH 2013.

**J.M. MUTAVA
JUDGE**