



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL CASE NO. 67 OF 2005

REPUBLIC.....PROSECUTOR
R
VERSUS
REUBEN KIPTANUI
KIPTOOACCUSED

JUDGMENT

REUBEN KIPTANUI KIPTOO has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 of the Laws of Kenya.

The particulars of the offence are that on 5/6/2005 at Kamok village, Kapchela sub-location in Keiyo District of the Rift Valley Province he murdered **JOSEPH KORIR KIMITEI**.

Kimitei's body had been collected from the scene at Kamoko village by **Chief Inspector Hudson Wekesa Mukunji** (PW9), who was then the OCS Tambach Police Station, who had received a message from one P.C. Macharia at about 8 p.m. on 5/6/2005, to the effect that a message had been relayed from the radio-room at Iten Police Station of an incident of murder at Kamoko Village in Kapchela Village in Kapchela area, and that the situation was very tense, demanding immediate attention. He had been accompanied by the said Macharia as well as PCs Mohamed and Wanyama to the scene where they found a large group of people. The body of the deceased lay facing downwards on a footpath. Upon enquiring, he learnt that the 'suspect' had gone to the home of the local Assistant Chief where he proceeded to, but he met the Assistant Chief with the said suspect on the way, at which point the latter who happens to be this accused was handed over to him by the Assistant Chief. The Assistant Chief also handed over to him a panga, which was the alleged murder weapon. The body was later taken to the mortuary and he later arranged for an autopsy, witness statements were recorded, after which Kiptoo was charged with the offence of the murder of Kimitei.

The State called a total of 10 witnesses.

According to **Dr. Francis Kiprop Maiyo** (PW2) who performed the autopsy on the body of Kimitei on 9/6/2005, the cause of death was cardio-pulmonary arrest caused by very severe hemorrhage secondary to deep cuts on the occipital part of the head. He had noted that the posterior part of the head had three deep cuts extending to the brain tissue; that the bone of the posterior region had cracked, and brain tissue was exposed in three areas. He was of the view that the injuries were inflicted by a sharp object.

The only witness who claimed to have witnessed the assault that led to Kimitei's death was his daughter

one, **Lilian Chepkoech Korir** (PW6) who testified that at about 6.00 p.m., on 6/10/2005, while on her way to the shops, she saw her father approaching from the forest; that while they were about 10 meters apart, she saw the accused who is her paternal uncle jump over a fence from his home, and run towards the deceased whom he slashed thrice with a panga at which point her father fell down. She run away and started screaming. The accused run away towards the forest as a crowd gathered at the scene. She testified that the accused left the scene with the said panga.

One of the people who went to Lilian's aid was **Sammy Kwambai Kipchoge** (PW 3) who recalled how at around 7 p.m. while on his way from the grazing fields, he had heard her scream from a distance of about 60 meters and that as he run to her rescue, he met the accused person, and that upon enquiring from him what was the cause of the screams, the accused who he was able to recognize and who was allegedly armed with a panga told him that he had cut 'Joseph', after which the accused headed towards the forest. He also testified that Ronald Biwot, Kipchumba Kirui, John Kangogo (PW4), Lilian Korir (PW6), Jane Korir (PW5), Joseph Kimetto (PW7) and Lawrence Lokuru (PW1) were all present when the accused stated that he had 'cut Joseph'.

John Kibet Kangogo(PW4) also testified how went to Lilian's aid at about 6.30 p.m.; that as he run towards the scene to establish what was happening, he met the accused person who was armed with a panga and who was on his way from the scene; that the accused whom he easily recognized told him that he had 'cut Joseph Kimitei' with the panga. He went and saw Kimitei's body after which he went to report the matter to an Administration Policeman at the Chief's camp who advised him to go and file a report with the local Assistant Chief one **Joseph Kimetto**, whom he later found at the shopping centre.

Kimitei's wife **Jane Korir** also testified how she had gone to her daughter's aid and how she found her husband's body at the scene, where she found many people.

Joseph Kipkemboi Kimeto (PW7) the Assistant Chief of Kapchelal to whom the initial report was made, recalled how he had telephoned the Police at Iten to report the incident, after which he went to the scene which was one (1) kilometer away from the centre, where he found the body of the deceased and a few people including PW5 and PW6; that he left the scene at 11.30 p.m. after receiving a message from his neighbor, one **Harun Cherop**, that the accused was in his house, which house was about 3 or 4 kilometers away from the scene; that Reuben Kiptoo whom he knew very well, and whom he found asleep, told him that he had injured somebody and that he was not sure whether the man was still alive, after which Kiptoo dressed up and showed him a panga, which was blood stained on the blade. According to this witness the panga had a long blade, with a handle that was covered with rubber. The Chief handed over Kiptoo and the said panga to Police Officers from Tambach who had just visited the scene of the crime.

The panga was produced as exhibit P2.

Though the State offered its last witness for cross-examination, the defence did not take advantage of it, perhaps due to the fact that he had intimated that all he knew about the matter was what the wife of the deceased had told him

The accused gave an unsworn statement of defence, and told the court how he had woken up as usual on 5/6/2005, and started his usual chores; that he tended to his cows which were in a zero grazing unit until noon when he went to the local shops where he had an altercation with the wife of the deceased, after which he went back home. He then left his home at 2.25p.m., with a view to visiting one Sylvester whose home was about 12 km away where he arrived at 6.30 p.m. but upon finding nobly at the home, he decided to return back to his home through Chebiemit where he hoped he would meet Sylvester, but that was in vain. He proceeded back home and arrived in his local area at about 8.45 p.m. and while he was about 1 ½ km away from his house, he met a woman, and though he did not know her name he knew her as the wife of a Police officer; that he then learnt that he was wanted for Kimitei's murder. He decided against going to his house for fear of being attacked and thought it wise to report the matter to the local Chief, whom he did not find at home but his wife gave him dinner and showed him where to sleep in her sons' hut, which was about 1.5 km away, as he awaited to see the Chief the following morning, but the

that the said Chief who was accompanied by Administration Police officers arrived at 10.00 p.m., and he opened the door for them; that the Chief then informed him that he had been to his home, and he convinced him to accompany him to take his brother to Moi Teaching & Referral Hospital for treatment, instead of which they went to the Chief's home at which point he realized that he was under arrest. It was also his evidence that the Chief came after a short while and produced the panga which was later produced as an exhibit in this matter. He told the court that he had no quarrel with the deceased, whom he had last met in April 2005, as they were both busy. He denied having beaten P.W.5.

I have considered the evidence on record as well as the submission of both counsel and I find that the evidence for the State was full of contradictions, glaring loopholes and serious omissions. The evidence reveals that Lilian (PW6) conceded during cross examination that though she had testified that the accused had slashed her father twice on the same spot at the back of the neck; that she screamed when she witnessed the attack, and that though she had warned her father of the impending attack, the accused had run towards him and he threatened her and warned her that he would beat her if she went anywhere near them, she did not record as much with the Police at the first instance. Needless to say the fact that she saw him slash the deceased twice would tend to contradict the postmortem findings.

But that is not all, for though PW 3 had testified that several people were present when the accused stated that he had cut Joseph, two were not called as witnesses, and none of the others corroborated that line of evidence, indeed one of those whom he claimed was present then was PW4 conceded during cross examination, that he was alone at the time when the accused made the remark. Lawrence Lokuru (PW1) denied having gone to the scene. PW 5 also conceded that (PW1) had not gone to the scene but had remained at the hotel throughout the whole period.

PW4's evidence that he was accompanied by PW1 to the Chief's camp when he went to file the report was refuted by the latter who denied the fact, and I do take note of the fact that PW7 the Assistant Chief conceded during cross examination that Harun Cherop who had informed him of Reuben Kiptoo's presence in his home, Cherop did not record his statement with the Police neither did his children who had allegedly been sleeping in the same room with Kiptoo. He also stated that when he woke up Kiptoo, the latter picked up the panga which he had kept behind the bed and left with it, yet he later informed the court that he was the one who had carried the panga when they got into the vehicle. He also conceded that he had many pangas in his home three of which were similar to the panga which he handed over to the police, and that he also handled the alleged murder weapon, which was then covered with blood and some white stuff; and that the stains were wiped off the panga at the Police Station, yet PW9 testified that the panga that was handed over to him was a small panga which was not stained at all.

There was also conflicting evidence on how the accused was dressed at the material time for according the PW4, the accused was dressed in a white striped T-shirt, while according to PW6, he was dressed in a black coat and pair of trousers but had no cap at the material time, yet according to PW7, at the time when he handed over Kiptoo to the Police, the later was dressed in heavily blood stained clothes, yet according the PW9, at the time when he was handed over to him, the accused was wearing a blue shirt and a grey large jacket, which clothes were not bloodstained. It is very difficult to believe the Assistant Chief's wife would have allowed the accused to spend a night in the same house with her children, given the fact that it is alleged that he was dressed in clothes which were heavily soiled in blood, and had a blood stained panga with him!

But that was not all, for I find that the investigations were rather shoddy. PW9 conceded during cross examination that his first task at the scene at the material time was to try and get first hand information on what had happened and that though he did obtain the said information from many witnesses who included a group of people who were at the scene as well as the wife of the deceased (PW5), he however did not talk to Lilian Korir who was the only person who claimed to have witnessed the attack. PW9's reason for the omission being that he "*was not interviewing everybody*". He learnt of the incident from PW5, who had not witnessed it at all. He also conceded that he had not seen the need to go and see where the accused had been hiding; that it was pointless for him to go and see the place in the Assistant Chief's home, where the killer weapon had been placed, neither did he go to look for those who had seen the stained panga, because in his own words, "*I had the murder weapon in my possession, it was an obvious*

case so there was no need to dust the panga. The panga was handed over to me by the Assistant Chief. You only dust for fingerprints where the issue is not clear. It was an obvious matter.....I never took any blood samples, it was a family matter where everybody knew everybody and I took what they told me, for granted.”

The prosecution attempted to impute motive arising from an alleged fight which the accused had allegedly engaged in with the wife of the deceased that afternoon, but nothing revolves around it for her evidence was not convincing and it was clear that she had started the fight. PW5 conceded during cross examination that they were all related and that he had never heard of any quarrel between the accused and the deceased.

The assessors have returned a verdict of guilty, but due to the above findings, I find that the State has failed to prove its case to the required standard and I accordingly acquit **REUBEN KIPTANUI KIPTOO** of the charge of the murder of **JOSEPH KORIR KIMITEI**.

Dated and delivered at Eldoret this 11th day of January 2011.

JEANNE GACHECHE

JUDGE

In the in the presence of:

Mr. Chirchir for the State

Mr. Chepkwony holding brief for Mr. Miyianda for the accused

Accused - present

Court Clerk – Collins (interpreter English – Kiswahili)