



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**CRIMINAL CASE NO. 42 OF 2008**

REPUBLIC .....PROSECUTOR  
VERSUS  
GILBERT MUTAI.....1<sup>ST</sup> ACCUSED  
HILLARY KIPROTICH.....2<sup>ND</sup> ACCUSED

**JUDGEMENT**

**STEPHEN KIPNGENO KORIR** was murdered on 29<sup>th</sup> October 2008. The Postmortem conducted on his body by Dr. Ben Kiplangat (PW 5) on 1/11/2008 at Litein Mission Hospital showed that he was a male African in his 30's with a height of 5' and 8". The body had been preserved well. The estimated date of death was less than 5 days from 1/11/2008. The body had lacerations on both knees and deep open cut wounds on the head and several bruises on the head. Internally, the head cut wound was deep and had exposed the brain and the skull was fractured. His findings were that the cause of death was excessive loss of blood and brain damage.

Gilbert Mutai and Hillary Kiprotich were charged with the murder of Stephen Kipngeno Korir under **Section 203** as read with **Section 204** of the **Penal Code, Cap 63** of the laws of Kenya. The particulars of the offence were that

***“On the 29<sup>th</sup> day of October 2008 at Kusumek village in Buret District within Rift Valley Province jointly murdered STEPHEN KIPNGENO KORIR”.***

The accused pleaded not guilty to the charge. The prosecution called 5 witnesses who gave evidence in support of the charge.

The two accused are brothers. The 1<sup>st</sup> Accused, Gilbert Mutai is married while his younger brother and co-accused, Hillary Kiprotich, is single. Their father, Joseph Kimutai Soi, testified as the first prosecution witness (PW1). He was in Chesingoro, Litein, on 29/10/2008. He did not witness the deceased being injured. However, the wife of the 1<sup>st</sup> accused woke him up at 10pm on 29/10/2008 and informed him that Arap Korir, the deceased, had been injured. He did not know when, how or by whom the deceased had been injured. He took the deceased to hospital at Litein where the latter died.

Fred Kipngeno, who testified as PW2, told the Court that he hailed from Litein and worked as a hawker of clothes. He was in the house of the 1<sup>st</sup> accused, Gilbert Mutai on 29/10/2008 at 8.00pm. He told the Court that they were drinking local brew there. In the house were Gilbert Mutai, 1<sup>st</sup> accused and the wife of the 1<sup>st</sup> accused. PW1 left the house of the 1<sup>st</sup> accused, and though he could not remember the time, he could remember that the deceased was also in the house. He knew him as the deceased had been his neighbours for a long time. He did not know what transpired after he left but the following morning, he

heard from neighbours that the deceased, Arap Korir had been injured and had died.

The deceased's younger brother, Simon Kiprono Korir, who was a teacher at St. Joseph's Primary School in Elburgon, testified as PW3 and told the Court that on 29/10/2008, he learnt about the death of the deceased and traveled to Litein Mission Hospital on 30/10/2008 where he confirmed that the deceased had died after viewing the body. He also attended the postmortem on 1/11/2008 by Dr. Ben Kiplangat (PW 5).

Cecilia Chepkurui Korir, (PW4) the wife of the deceased testified that the deceased left her in the house at Chesingor in Litein at 5pm on 29/10/2008. The deceased did not return that night or the following day. As he usually never slept out, she suspected that something was wrong. She was about to go to the police station on 30/10/2008 to report when a villager, one Joel Sang, went to her and informed her that her husband had been murdered the previous night. On 1/11/2008, she went to Litein Mission Hospital where she attended the postmortem.

This was the only evidence adduced in support of the charge. It shows that the deceased was alive and well when he left his house at 5.00pm on 29/10/2008. It also shows that at 8pm, the deceased was with Fred Kipngeno Rono (PW2) in the house of Gilbert Mutai and Gilbert Mutai's wife. They were taking local brew according to PW2. PW2 left the deceased in the house of Gilbert Mutai with the latter and his wife.

In his evidence, the 1<sup>st</sup> accused told the Court that he was in the kitchen of his house and was taking his child to the main house when he heard somebody screaming from the nearby road. He called the second accused and his father also came and they ferried the deceased to hospital. The 2<sup>nd</sup> accused told the Court in his evidence that he was in the house of the 1<sup>st</sup> accused when the later called him and that they took the deceased to Litein Hospital. The accused were very economical with the facts. They declined to throw any light when the deceased left the 1<sup>st</sup> accused's house, if he ever did. The accused had no burden to prove their innocence. It is not clear whether the deceased had left the 1<sup>st</sup> accused's house when he was injured or whether he was injured while there. There is obvious concealment by the prosecution witnesses who are family members as to what really transpired on the night of 30/9/2008 in the house of the 1<sup>st</sup> accused.

There is no doubt that the deceased was murdered. But the evidence adduced in support of the charge falls short of what is required as it does not establish beyond any reasonable doubt that the accused murdered him. Courts of law base their decisions on evidence, and where the evidence adduced does not prove the offence against an accused person beyond any reasonable doubt, the Court is bound to acquit him.

In this case, it is my finding that the evidence does not prove the offence of murder against the accused beyond any reasonable doubt. In the circumstances I acquit both accused. Unless otherwise lawfully held both accused shall be released and set free forthwith.

**DATED at KERICHO this 30<sup>th</sup> day of March 2011**

**G.B.M KARIUKI, SC**  
**RESIDENT JUDGE**

**COUNSEL APPEARING**

Mr. P.Kiprop, State Counsel

Mr. K.L.Kipyegon, Advocate, for both Accused

Mr. R. Koech, Court clerk