



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 29 OF 2008**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BENJAMIN LANGAT.....ACCUSED**

**JUDGMENT**

Benjamin Langat is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on 17/2/08, at Menengai Crater within Nakuru District, jointly with others not before the court, murdered Michael Kiplimo Samoei. He denied committing the offence and the prosecution called a total of 4 witnesses in support of the charge.

Christine Chemtai Yegon who testified as PW1, recalled that on 17/2/08 she was selling 'busaa' (traditional brew) that day. Jackline and Mike (the deceased) went to her house at about 1.00 p.m. Two strangers also came there and Jackline told Mike that the strangers were his agemates. Mike went to talk to them and returned to the house. Mike and Jackline were drinking 'busaa'. They quarrelled for a while then left after 30 minutes. Mike's sister Caroline chepleting later came asking for Mike and Jackline but on being informed that they had left, she followed. After about 30 minutes PW1 heard screams and on going where the screams emanated from, found Mike's body on the side of the road with a cut wound on the head. PW1 found Jackline and Caroline at the scene. PW2, Caroline Chepleting recalled that on 17/2/08 about 5.00 p.m. she had gone to fetch water when Peter (now deceased) and his wife, Emily, informed her that Mike and his wife Jackline had been at PW1's house where they fought. PW2 went to PW1's house but found that they had left and followed them only to find Mike's body on the roadside. PW2 found Jackline where the body was and they did not talk. PW2 screamed, people came and took away Mike's body and Jackline PW2 noted that the deceased had cut wounds on the head and chest.

Dr. Samwel Onchere (PW3) produced a post mortem report that was prepared by Dr. Wainaina who conducted the post mortem examination on the body of the deceased on 25/2/2008. The doctor who did post mortem observed that the body had a stab wound on the left upper neck, stab wound on the right shoulder, stab wound on right posterior chest and internally, the right lung had collapsed and there was massive bleeding into the chest, left lung was displaced. He formed the opinion that the cause of death was haemotherax and tension secondary to stab wounds. The post mortem report was produced as Ex. 1.

PW4 Cpl. Lawrence Njue was asked by his boss to visit the scene of crime at Menengai Crater where he found the body of Michael Kiplimo Samoei in a pool of blood in a thicket. They made inquiries from Jackline Cheptoo, a friend to the deceased who claimed that they had been attacked when in the process of love making and the attackers had escaped. He said the accused was brought to the Police Station the next day when he was charged with the offence.

There is no eye witness to the murder. The key witness in this case was Jackline Cheptoo who had been

with the deceased at 1.00 p.m. when PW1 was with them at her house, when they quarreled and she was found at the scene of the murder. She did not testify. The prosecution closed its case when they could not trace any more witnesses. So far, there is no evidence whether direct or circumstantial, linking the accused person to the murder of the deceased. The accused person has not been linked to the three strangers who went to see the deceased at PW1's house earlier on the fateful day. The prosecution has a duty to prove its case beyond any reasonable doubt. The evidence on record falls far below the standard of proof required in criminal cases. The accused person will not therefore be called upon to defend himself. He is hereby acquitted of the charge under **Section 306(1)** of the **Criminal Procedure Code**.

**DATED and DELIVERED this 1<sup>st</sup> day of April 2011.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Mr. Omutelema for the State.

Mr. Mageto for the accused.

Kennedy – Court Clerk.