



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**Criminal Case 43 of 2008**

1. Criminal Law

2. Criminal case

3. Subject of main case

I. Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

II. Particulars of offence

**On the night of 2<sup>nd</sup> and 3<sup>rd</sup> November 2008 at Kipsolii village in Kericho District of Rift Valley Province murdered Mary Chepkoech.**

(a) Plea mention 17/11/2008. Plea not guilty (20/11/2008).

(b) Trial (5,6,October 2009 adjournment advocate's absence). 8/10/09, 10/11/09, 2/12/09, 14/12/09, (10/3/010 advocate and Doctor absent), 18/3/010, 19/4/2010. for Judgment/Court transferred to Eldoret from Kericho High Court.

(c) Accused and deceased, live in couple in mud hut belonging to deceased's employer. Deceased found dead in the mud hut house on 3/11/08. Building shown by accused to P.W.1. P.W.1 contacts Chief, accused apprehended and charged with murder.

(d) Accused admits to have lived with deceased and was with her that previous night. Confesses to P.W.1 (cross-examination by advocate for accused of P.W.1)

(e) (i) Scenes of crime- P.W.6

(ii) Medical doctor

Post mortem report of deceased (P.W.9). mental status of deceased 9 (P.W.10).

(iii) Assessment analyst (P.W7).

2. Defence

(i) That the deceased and accused had taken alcohol.

(ii) Deceased fell on head.

(iii) Used his suit to wipe head

(iv) Deceased found dead.

3. Held

i). The accused guilty as charged

ii). Sentence to death

4. Case Law

5. Advocate

- (i) Mr. T.M.O. Nyaingiri holding brief for J.J. Onyango Advocate instructed by the firm of M/s J.J. Onyango & Co. Advocate for the accused
- (ii) Mr. B.L. Kivihya instructed by the office of the Attorney General for the State.

REPUBLIC ..... PROSECUTOR

=VERSUS=

ELIJAH KIPKURUI KIMETO ..... ACCUSED

### JUDGMENT

#### 1. Introduction

1. Elijah Kipkurui Kimeto, a male adult was brought to Court on 17<sup>th</sup> November, 2008 but the matter was mentioned on 20<sup>th</sup> November 2008 to await for an advocate to represent him to be appointed. The information before Court was one of **Murder Contrary to section 203 as read with section 204 of the penal code.**  
**The particulars of the offence being**  
**On the night of 2<sup>nd</sup> and 3<sup>rd</sup> November 2008 at Kipsoli village in Kericho District of the Rift Valley Province murdered Mary Chepkoech.**
2. The Accused pleaded not guilty. (The trial Commenced in Kericho and later Eldoret where Hon. Judge was transferred)
3. The relationship between the deceased Mary Chepkoech and the accused was that of boyfriend/girlfriend. The two were living together in a semi permanent mud house that belonged to the deceased's employer. The deceased was married and indeed P.W.5 her son (aged 19 years old) came to give evidence of the fact that the deceased was his mother and identified her body.

#### II. Background facts

4. The prosecution evidence before Court was that P.w.1, an elder and also a pastor met the accused on 3rd November 2008 and approached him stating that he P.W.1 stops as he had a problem. That the lady he had been living with had died/been killed. On receiving further information from the accused the witness accompanied the deceased back to the temporary house. There he opened the door and found blood everywhere and the deceased lying down having passed away.
5. On cross-examination P.W.1 stated that the accused had slapped and or beaten the deceased. **"He himself told me he slapped (her) and (she) fell on the head at midnight he found she had died"**.
6. P.W.1 escorted the accused to the Chief. The Police on being contacted arrived at the scene and took photographs (P.W.7). The body was removed to the mortuary where a postmortem was undertaken (P.W.9). Samples of the intestine

was taken to the government analysis. The report of the post mortem noted that the body reeking of alcohol. There was a high spinal code injury that is subluxation of C3-C4 spinal code contusion C3.

7. The government analysis (P.W.7) was required to analyze the blood sample and soil taken from the scene together with a liquid on a bottle. The conclusion of her report being that the blood of the deceased was group B. The blood group of the accused was group A. The accused suit/clothings had blood stains of group B (deceased's blood group). The liquid in the bottle was alcohol.
8. The accused's mental status was confirmed by another medical officer (P.w.10) to be normal. He was fit to stand trial.

### III. Submissions

9. It was at the end of the defense case that the advocate stated that the deceased's death was accidental – that both the deceased and accused were drunk.
10. The accused in his unsworn statement had informed the Court how he had gone out drinking and came back with three cups of alcohol. The deceased went out of the house and returned in a hurry. She knocked the door then fell on the lid. He asked her what chased her. She never replied. He saw blood from the mouth. He then pulled her on the lid and used his clothings to wipe her blood. In the morning he found her dead. He found an elder of the village and informed him that the deceased whom they stayed with died. He was taken to the office of the Chief. He called no witness.
11. The advocate for the state in submission stated that the accused had sufficient evidence against him to have done the commission of offence. The two were alone. The cause of death, as evinces from the postmortem was not as a result of a single fall. There was indeed a struggle that resulted in the death of the deceased.

### IV. Opinion

12. The circumstantial and scientific evidence before this Court confirms that the deceased half naked body was found on the floor of her house. She had injuries to her mouth with blood coming out. The cause of death was due to the spinal code injury at C.3 subluxation of C3-C4 of the spinal code.
13. On the morning of 3<sup>rd</sup> November 2008 the accused had met with P.W.1 and informed him that the deceased had passed away. The information received from the accused has been taken with caution by this Court. The advocate for the

accused questioned P.w.1 further on this. It is the answer that he gave in cross-examination that now becomes admissible in Court. That being, the accused person had slapped the deceased. That the deceased then passed away.

14. The force used to the deceased was excessive in that it caused her death. The advocate for the accused implied the death was accidental self accident and the accused was not to blame for it. That both were under the influence of alcohol.

15. The accused though stated that on seeing the deceased blood he went to sleep. He never sought for help to assist the deceased to be taken to hospital for treatment. This help appears to have been in the morning when he met P.W.1 the pastor and informed him of what occurred.

16. The deceased's death was unlawful. She died in circumstances that was not as a result of an accident. The accused, malice aforethought is to be considered. Did he know what he was doing? The issue that he was intoxicated did not arise as a defense. The deceased was intoxicated. The defense was that deceased death was accidental and the accused inflated no injury. If this was so, then there would not have been blood every where namely on the lid, the floor and on the accused's clothings.

17. This Court is of the opinion that the prosecution has established a case beyond any reasonable doubt. That the accused did inflict injury on the deceased that caused her unlawful death. He is found guilty as charged.

**DATED THIS 21<sup>ST</sup> DAY OF APRIL, 2010 AT ELDORET.**

.....  
**M.A. ANG'AWA**  
**JUDGE**

15<sup>th</sup> July 2010

V. Sentence

18. The said convict Elijah Kipkurui Kimetho who has been found guilty by this Court for the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code is hereby sentenced to suffer Death.

19. There will be 14 days right of appeal under Section 379(3) Criminal Procedure Code.

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**M.A. ANG'AWA**  
**JUDGE**

Advocate

- (i) Mr. T.M.O. Nyangiri holding brief for J.J. Onyango Advocate instructed by the firm of M/s J.J. Onyango & Co. Advocate for the accused - Present
- (ii) Mr. B.L. Kivihya instructed by the office of the Attorney General for the State - Present

State: I ask for more time to furnish persons counter.

T.M.O. Nyangiri: No objection.

The offender be taken to police.

ORDER: Probation officer report be made for the offender.

ORDER: The accused be remanded at the Kericho Prisons. That he should be taken to Kericho Police Station on 26<sup>th</sup> April, 2010 for purposes of taking the finger prints afresh. The offender remain at the Kericho G.K. Prison to await a probation report. There will be a mention on 6<sup>th</sup> May 2010.

ORDER: Sentencing on 6<sup>th</sup> May 2010 at 9.00 a.m. Before High Court – Eldoret.

**M.A. ANG'AWA,**  
**JUDGE. 21/4/2010.**