



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**Criminal Case 2 of 2009**

1. **Criminal law**
2. **Criminal case**
3. **Subject of case**

- I. Murder
  - Contrary to Section 203 as read with Section 204 of the Penal Code.
- II. Particulars of offence
  - On 1<sup>st</sup> day of January 2009 at Kyongong village in Burret District of the Rift Valley province jointly murdered Benard Kimutai Bett.  
(Hearing 2/12/09, 28/1/10,24/2/10, 18/3/10,and 24/3/10)
  - (a) Two subjects (minors)
  - (b) F.K.N. arrested first. Before Court on 15/1/09. P.K.C. before Court 27/1/09.
  - (c) Facts – new year 1/1/2009.
  - i). F.K.N and P.K.C. together drinking at Rose’s.
  - ii). P.W.3 and another sitting when P.K.C. comes to urinate near where they were. On being questioned, fights them (P.W.3 and deceased ) with pole.
  - iii). P.W. 8 a minor saw P.K.C. (his uncle) and F.K.N. fight and beat up deceased. Unable to stop fight.
  - iv). Deceased taken to hospital. Admitted. Dies by 9.00 p.m.
  - v). P.K.C. not found till few days later. But P.K.C. & F.K.N. arrested and charged.
  - vi). Defence
    - PNK – sister sold land. Grudge with sister ( subject No. 2).
    - F.K.N. drinking spree no one fought. (Subject No.1).

4. **Held.**
  1. Subject 1 and 2 found guilty.
  2. Direct evidence proved.

5. **Advocate**
  - (i) F.F. Onyango advocate instructed by the 2<sup>nd</sup> Subject
  - (ii) C.K. Korir Advocate instructed by the 1<sup>st</sup> Subject
  - (iii) B.L. Kivihya, State Counsel instructed by the Attorney General for the State

	REPUBLIC .....	PROSECUTOR
	=VERSUS=	
<b>F.K.N.</b>	.....	<b>SUBJECT NO. 1</b>
<b>P.K.C.</b>	.....	<b>SUBJECT NO. 2</b>

## JUDGMENTS

### I. Introduction:

1. J.K.N. and P.K.C. are minors. The information before this Court against them is one of **Murder contrary to Section 203 as read with 204** of the Penal Code. The particulars of offence being **on the 1<sup>st</sup> day of January 2009 in Burret District of the Rift Valley Province jointly murdered Bernard Kimutai Bett.**

1. At all times the trial of the two subjects was held in camera. Both pleaded not guilty to the information. J.K.N. .... subject No. 1

was represented by C.K. Korir & Co. Advocate whilst P.K.C. .... subject No.2

was represented by J.J. Onyango of Jamusumba Onyango & Co. Advocates.

The two cases Cr. 2/2009 and Cr. 5/2009 were consolidated (24/2/2009) (**Ang'awa J**).

2. During the proceedings the trial judge was transferred from Kericho to Eldoret. The trial commenced hearing on 2/12/2009, 28/01/2010, 24/2/2010, 18/3/2010, 24/3/2010.

### II. Background

3. It was new years day, 1<sup>st</sup> January 2009. As usual, there was merriment. One Rose P.W.1 had some alcohol that she served. The two subject FNK and PKC were part of the merry makers, P.W.3.

E. Terer was also part of the marry makers. He was seated aside with others and including Bernard Bett, the deceased (aged 21 years old).

4. According to P.W.3, P.K.C. came to where they were and began "urinating". They stood up and asked

why he did so. A fight broke out. P.W.1 saw P.K.C. and J.N.K. ran with a pole after the deceased and another. P.W.2 saw the two run and gave chase. They returned and she noticed P.K.C. had blood on his shirt.

5. A key witness was P.W.8, a minor. This Court warned itself of admitting his evidence. Nonetheless his evidence was corroborated by P.W.3. He was aged 14 years old. P.K.C., Subject No.2 was his uncle. He then saw PKC & JNK beating the accused with a pole. He asked them to stop but they declined.

6. P.W. 5 found the deceased lying down on the ground injured, assistance was given to the deceased who was taken to hospital but died at 9.00 p.m. that night. By now the subjects

P.N.K. had disappeared . He was traced through his brother. Both were brought before the Court separately and information preferred against them. Their cases were later consolidated.

7. In their defence J.N.K. pleaded innocence. Yet, he admits being at Rose's place (P.W.1) where drinking was going on but he went home and gave the impression he knew nothing of the incident. Subject No. 2 P.N.K. stated that his sister P.W.2 had a grudge with him. This was due to a land matter. As a result the subject No. 2 had tried to stop the sister from selling their land.

### III. Submissions

8. The advocate for subject No. 1 said that he never participated in the fight. Subject No.2's story was that he never participated in the incident.

9. The State relied on the evidence before Court.

IV. Opinion

10. Evidence before this Court is denied. P.W.3 and P.W. 8 saw the two subjects attack and wound the deceased. P.N.K. had been said to be the person in the forefront of the attack. Both were together. P.N.K. provoked P.W.3 and deceased by urinating near them.

11. The defence that they never participated in the event is not acceptable to this Court. They did participate and caused grave injury to the deceased. The deceased passed away several hours later. The doctor termed the cause of death as multiple skull fracture caused by a blunt object. This is consistent with the injuries inflicted as disclosed in evidence.

12. This Court finds that the deceased died. The cause of his death was unlawful due to injuries inflicted by the two subjects.

13. There was malice aforethought.

14. The two subjects are found guilty.

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

.....

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

Court: Whereas the two subjects in court were minors at time of offence. Whereas they are 23 years old now.

V. Sentence:

17. Subject No. one : Life imprisonment.

18. Subject No. two: Life Imprisonment.

19. 14 days right of appeal.

**DATED THIS 27<sup>TH</sup> DAY OF MAY 2010 AT ELDORET.**

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

Advocate

- (i) J.J. Onyango advocate instructed by the 2nd Subject - Present
- (ii) C.K. Korir Advocate instructed by the 1<sup>st</sup> Subject - Absent
- (iii) B.L. Kivihya, State Counsel instructed by the Attorney General for the State

B.L. Kivihya: State Counsel: I have no previous conviction.

ORDER: There be a probation officer's report for both offenders.

ORDER: Further mention on 6<sup>th</sup> May 2010 at 9.00 a.m. to await report from Probation Officer. The two be remanded in Kericho. That they remain there till report is ready for 6/5/2010 at Eldoret.

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