



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Criminal Case 46 of 2008

1. Criminal Law
2. Criminal case
3. Subject of main case:-
 - Murder
 - a). Contrary to Section 203 as read with Section 204 of the Penal Code.
 - Particulars
 - a). On the 9th of November 2008 at Makiten village in Kericho District of Rift Valley Province murdered Julius Kiplimo Sigei..
 - b). Plea not guilty (21.11/2008).
 - c). Relationship between deceased and accused – father and son.
 - d). Two quarreled on the 9/11/2008.
 - e). Alleged accused inflicted fatal injuries with cutlass (panga).
 - g). Witnessed by P.W. 1 and 2 daughter to deceased.
 - h). Statement under caution – rejected LN 41/09.
 - i). Defense – provocation, but in defence no mention of provocation but a fight/quarrel occurred. In the process deceased injured.
 - j). State – provocation doesn’t arise.
5. **Held**
 - (a) No provocation
 - (b) Ingredient of murder proved
 - (c) Guilty as charged.
6. Case Law
 - (a) **Republic –vs- Dahanya (2001) (KLR 428)**
Etyang J.
(Principles/3 essential ingredient for murder)
 - (b) **Republic –vs- Steven Saroni Meshi**
(2004) eKLR (Osiemo J.) (new)
(Deceased the aggressor)
7. **Advocates**
 - (i) O.Koko Advocate instructed by the Firm of M/s Obondo Koko & Co. advocate for the Accused
 - (ii) B.L. Kivihhya, State Counsel instructed by the Attorney General for the State.

REPUBLIC PROSECUTOR
=VERSUS=
ISAIAH KIPNGETICH ACCUSED

JUDGMENT

- I. Statement of offence

1. Murder

**Contrary to Section 203 and read with Section 204
of the Penal Code.**

2. Particulars of offence

**Isaiah Kipngetich on the 9th day of November 2008 at
Makuten village in Kericho District of Rift Valley
Province murdered Julius Kiplimo Sigei.**

3. When this information was put to the said Isaiah Kipngetich he pleaded not guilty to the offence. This was on the 20th November 2008. This Court noticed that his shirt was blood stained and he appeared to have been injured. He was ordered to be referred for treatment at the Hospital. On the day the offence was alleged to have been committed, namely, 9th November 2008, the accused was examined by Dr. Wainaina (P.W.9) who found that he was mentally sound.
4. The trial was set down for the 4th November 2009, a year later it continued on the 11th November 2009, 27th January 2010, 24th February 2010, 24th March 2010. The delay was due to the defence rejecting the admission of a charge and caution statement and one of the prosecutions witness failing to attend Court when required. This Courts presiding Judge was then transferred to the High Court of Kenya at Eldoret.

II. Background facts

5. The relationship between the late Julius Kiplimo Sigei and the accused Isaiah Kipngetich is that of father and son. According to the prosecution witness P.W. 1 and 3 who are also related to the deceased as his daughter, on the material day of 9th November,2010 a quarrel had arisen between the deceased and accused. P.W.1 followed the deceased into the house. He was annoyed and took a stick stating that he would kill the accused. When she tried to restrain him, he asked that she looks for shoe polish for him. This witness then saw her brother the accused attack their father. P.W.3 likewise stated that though she was not there when the quarrel arose, she arrived on time to see the accused, her brother take a club (rungu), iron bar and a cutlass (panga). He threw the club at the deceased. It missed the deceased. He threw the iron bar at the deceased which caused him to fall down. He there after used a cutlass to slash the deceased on the neck. Thereafter he wiped the excess blood from the cutlass on the grass. This was after he stated “ I have finished my mission”. He then went and changed his shirt.
6. On receiving information of the said incident at about
11.15 a.m of the same morning,
P.W.5,Chief Inspector B. Amugune, the officer in Charge commanding Sosiose
Police Station proceeded to the scene. There he found a large crowd. He was able to cause

scene and the body of the deceased to be photographed. This was done by P.W.6 Police Constable C. Kiprono Rotich attached to the scenes of crimes. He arrived there at 4.25 p.m. and took the four photo graphs of the deceased. The police also recovered the cutlass (panga) that was forwarded to P.W.7, Stephen Matude Joel Weibe, a government analyst. He also recovered a blood sample of the deceased and the accused from the police. He used the sample to compare with the blood stains found on the cutlass. He found that the blood groups of the deceased and the accused were both A. This was the same group A found on the cutlass.

7. The deceased's body was then taken to the Mortuary where a postmortem was conducted on the 12 January 2008. The deceased brother P.W.4, Mobegi Kipngeto Sigei attended. He identified the body to the medical doctor. P.W.2 Dr. Langat confirmed that she conducted the postmortem. Her findings was that there was a fracture to the left frontal head. There was also a bleeding from the neck. The cause of death was due to the excessive bleeding from the neck region. Thus a complete open fracture of the cervical spine and left temporal frontal head was said to be the fatal injury inflicted. The photographs produced shows a cut slash over the eyebrow and a slashed throat/at the neck.
8. An attempt to produce a charge and cautionary statement was defeated by the prosecution when the defence objected to the method in which the statement was taken. This was contrary to Section introduced by the new Law on “**Evidence (out of court confessions) rules**” 2009 Legal Notice 41/09.
9. At the close of the prosecution hearing the advocate for the accused asked that this Court discharge the accused on grounds that the three elements/ingredients referred to required to prove murder had not been established.
Republic –vrs- Dachaya (2001) KLR 428 (Etyang J), the three ingredients being that there was;
 - (a) “death of a person”
 - (b) “the accused caused the death through unlawful act’ and
 - (c) The accused had malice aforethought.
10. It therefore follows , if the accused herein relied on the defence of provocation, in the case of **Republic –vs- Steven Saroni Meshi - Nairobi HCCR 117/2003**, **(Osiero J)** where the deceased was the aggressor, there after the Court acquitted the accused, likewise the defence in this case wishes to be acquitted. A fight occurred and the deceased died.
11. This Court puts the accused on his defence.(The prosecution had strongly objected to there being provocation in this matter). The accused stated
“ **My names are Isaiah Kipngetch Kitur, when he reached home the deceased**

had started a fight. I started then to fight back . In the process he was injured. That is it. I call no witness.”

12. It was therefore the prosecution who stated that there was direct evidence to show that the incident occurred. P.W.1 and 3 witnessed the said incident. A dangerous weapon or weapons were used. The accused wiped the cutlass on the grass to remove the blood and uttered the words I **“have completed my mission”**. This is murder and not, said the prosecution, provocation.
13. In reply the advocate for the accused relied on Section 207 of the Penal Code. A charge of manslaughter should have been preferred instead.

III. Opinion

14. A person has died. The prosecution has been able to prove this beyond any reasonable doubt. The evidence by the prosecution, which evidence is direct evidence shows that the accused inflicted fatal injuries on the deceased. His defence according to his advocate is that of provocation. This is where the act committed in unlawful but the Courts can consider the relationship between parties to take into consideration the act committed was such that made the accused or offender to lose control and kill his victim. Something done in the “heat of the moment”.
15. From the evidence seen and heard before this Court, a quarrel did occur. What was interesting that no one stated what the quarrel was about except the advocate for the accused in his submissions who stated it was due to land. The accused himself did not say this. The actual cause of the quarrel having not been disclosed it can therefore not fall under arguments that at the heat or passion of the moment, the offender/accused commits the unlawful act. Example of acts that may make one lose their passion could be that of adultery between spouse; battery – if the deceased was in constantly battering the accused.
16. The deceased and accused quarreled. The deceased moved away into the house where he was with P.W.1 his daughter. He then went out. It therefore means that there was a brief break in which the accused had time to reflect and think before his next action. He instead armed himself and attacked his father. He threw a club (rungu) the deceased was not hit. He threw an iron bar that did hit the deceased and he fell down at this point then accused would have passed to think or make demands of the deceased. Without hesitation he proceeded to cut the deceased on the left frontal side of the head and again on the neck damaging the spinal cord at the neck. The deceased suffered hemorrhage from that wound at the neck and a fracture to the head /skull.
17. I believe the accused had time to reflect before he committed the unlawful act.
18. I find him guilty as charged and accordingly convict him of murder Contrary to Section 203 as

read with Section 204 of the Penal Code.

DATED THIS 21ST DAY OF APRIL, 2010 AT ELDORET.

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

Advocates

- (i) F. O. Koko Advocate instructed by the Firm of M/s Obondo Koko & Co. advocate for the Accused - Present
- (ii) B.L. Kivihya, State Counsel instructed by the Attorney General for the State. – Present

IV. Sentence

- 19. Order Sentence to suffer Death. 14 days Right of Appeal.

DATED THIS 21ST DAY OF APRIL, 2010 AT ELDORET.

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

Advocates

- (j) A.O. Oluoch/B.I. Kabaka holding brief for B.L. Kivihya for the Republic - Present
- (ii) T.M.O. Nyaingiri, Advocate holding brief for F.O. Koko for the Accused - Present

ADVOCATE STATES: There are no previous conviction. I have written six letters.

COURT: That the offender be remanded at the Kericho Police Station for fresh previous counter to be taken on 26th April, 2010 (Monday). That thereafter the offender be remanded in Kericho G.K. Prisons custody to await the previous counter for 26-27/4/2010.

By further order there be a probation officer's report to be brought up on the accused attendants report.

That the briefs of the state will be held by the Senior State Counsel F.O> Kokoi's brief to be held by an advocate from Eldoret.

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

ORDER: Report on 6th May 2010 before High Court at Eldoret..

Offender be Remanded in Custody at G.K. Kericho Prisons till 26th April 2010 to appear before D.C.I.O. for taking of finger prints, then before this High Court on 6th May,2010.

M.A. ANG'AWA,
JUDGE.