



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**CRIMINAL CASE NO. 23 OF 2009**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**GEOFFREY KIPTOO KIRUI.....ACCUSED**

**SENTENCE**

On 9<sup>th</sup> April 2009 at about 1pm the accused, **GEOFFREY KIPTOO KIRUI**, was in the house of one Chelogoi in Kipkelion, Rift Valley Province, drinking changaa with other changaa drinkers. He had gone there around 11:00am. At about 1pm on that day, **SIMON CHERUIYOT CHEPKWONY**, now deceased, also arrived in the house to drink changaa. He was an old man of about 50 who walked with the aid of a walking stick which he carried with him on that day. A quarrel erupted between the accused and the deceased when the deceased insulted the accused calling him a useless man who could not be relied upon to do a job of work entrusted on him. The deceased then proceeded to hit the accused with his walking stick on the right eye. The accused fell but managed to pick himself up. Sensing trouble, the deceased fled to a nearby shamba. Livid with rage, the accused got hold of an axe and went in hot pursuit of the deceased. He found him and cut him on the head with the axe. The deceased fell down unconscious. The accused fled from the scene.

On the way, the accused met one Sara Soi, a neighbour, whom he knew and informed her that he (the accused) had hit the deceased and that he might have killed him. The crowd of changaa drinkers in Chelogoi's home, which was not far, noticed the incident. They started screaming. On going to the scene, they found the deceased lying on the ground. The area Chief was informed and he, in turn, reported the incident to the police at Fort Tenant Police Post who came and took the body of the deceased to Kericho Hospital. Meanwhile, the accused went underground.

On 13<sup>th</sup> April 2009, the accused telephoned his brother, one Kimutai, informing him that he was in a place called Kunyak in Fort Tenant. He requested that he be escorted to the police. It was the accused's uncle, one Soi, who took the accused to Fort Tenant Police Post where the accused was arrested and transferred to Kipkelion Police Station.

Investigations were carried out into the killing of the deceased. On 15<sup>th</sup> April 2009, Postmortem was conducted on the deceased's body by Dr.Wendo who formed the opinion that the deceased died due to cardiorespiratory arrest caused by massive intracerebral bleeding following a cut of 6cm long and 2cm deep on the occipital aspect of the deceased's head. A Postmortem Report signed by Dr.Wendo dated 15<sup>th</sup> April 2009 was produced as an exhibit.

The accused was initially charged with the felony of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. This charge was subsequently reduced to a felony of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code. The accused pleaded guilty to the charge of manslaughter and was convicted on his own plea of guilty. When the facts hereinabove set out as

constituting the offence of manslaughter were read out to him, the accused, admitted that they were true thereby confirming the unequivocality of his plea.

In mitigation, Mr.Ong'anyi, Learned Counsel for the accused, told the Court that the accused regretted his act and wished to convey his apology to the family of the deceased. On the fateful day, said Mr.Onganyi, the accused spent most of the day imbibing changaa. But it was the deceased who verbally attacked the accused and then physically hit him with a walking stick. Mr.Onganyi pointed out in mitigation that the accused was drunk when he struck the deceased with an axe.

Aged 23 years, the accused is married and has a young family. He is the bread winner of his family.

I have taken these mitigating factors into account in assessing sentence. Mr.Onganyi pleaded for a non-custodial sentence. I observe that manslaughter is a serious felony that carries a maximum of a life imprisonment. The accused was however drunk but this is no excuse for violence. Irresponsible drinking cannot be invoked as a factor for leniency unless it had eroded one's sanity and greatly diminished one's sense of responsibility. A life was lost and the accused knew instantly that he had committed an offence, hence his going underground. Society does not expect those who kill while under the influence of alcohol to be treated leniently on that account alone. But I am mindful of the fact that the deceased was the aggressor and that he goaded the trouble. I also take into account the fact that the accused has been in remand for a little over one year and is a first offender who seems to show remorse. The sentence ought to punish him for the offence and at the same time help be corrective so that he may cease to be a danger to society when he eventually regains his freedom. Doing the best I can, and after considering the mitigation and weighing all the circumstances of this case, the sentence that commends itself to me is a term of imprisonment for a period of five years.

**DATED at KERICHO** this 29th day of July 2010

**G.B.M KARIUKI**

**RESIDENT JUDGE**

**COUNSEL APPEARING**

Mr.Kiprop State Counsel for the Republic

Mr.S.G.Onganyi Advocate for the Accused