



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CRIMINAL CASE NO. 3 OF 2008**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KIPKURUI BARONGE .....ACCUSED**

**J U D G M E N T**

The accused herein **KIPKURUI BARONGE** is charged that on the 6<sup>th</sup> day of January, 2008 at Bogoria village, Ewalel Location in Baringo District within Rift Valley Province he murdered **SARAH SOGOME RUTTOH**.

The prosecution called 8 witnesses. PW1 Christine Ngetich was the daughter of the deceased. She and PW2 Felix Kipruto identified the body of the deceased for purposes of postmortem. None of these two witnesses knew or witnessed what caused the death of the deceased. PW2 only noticed that the body had an injury on the neck but he did not know what caused that injury.

Joseph Simba Chepkwony who gave evidence as PW3 said that he was drinking busaa with many other people at the house of one Charles Chepkilot. The accused was there lying down in the kitchen holding a panga and eating raw maize. According to this witness the accused suddenly got up and rushed to where the deceased Sarah was sitting on a foam about twenty meters away from where the accused had been lying. He said he saw the accused cut the deceased on the front part of the neck and at its back with his panga. The deceased fell down and the witness ran away to his house and did not go back until the police came. He said that he did not know if the accused and the deceased had any disagreements. On cross examination he said that he did not tell the police that the accused was eating raw maize. He said he did not drink at that place because he found that busaa was already finished. He had been drinking elsewhere since 10.00 a.m. that morning and he was mildly drunk at 2.20 p.m. when he arrived at the scene.

PW4 Jacob Buret said that there was celebration of initiation of new circumcised boys and people were drinking busaa but he himself did not drink any. He saw the deceased sitting outside under a shade and the accused was sitting there with her. He was about ten meters away from the two. He saw the accused cut the deceased on the neck once on the front part of the neck and once on the back of the neck. He saw the deceased fall down and die. He identified a panga shown to him as the killer weapon. He said that he did not witness any fracas between the accused and the deceased. On cross examination he said that he was the one serving the usaa and he gave everyone 2 small tins of it including PW3. He reported that he saw the accused cut the deceased on the neck but he did not know why.

PW5 Everlyne Chelegat gave evidence that she was passing by the house of Charles when she saw the

accused lift his panga and cut the deceased. She put the legs of the deceased together and covered her body with a lessa as she had died. She and others then arrested the accused and handed him over to the police later when the police came. She changed that evidence in cross-examination and said that she did not witness the incident and was only called later when the deceased was already dead.

PW6 Charles Chepkilot was the owner of the home where the ceremony was going on. He was away cutting grass from his farm when he heard people screaming and he ran home. He found the deceased dead and the accused was among the many people present. He did not know if the accused and the deceased had a problem between them and he did not know what happened.

Dr. Emadau Papa produced the postmortem report in respect of the examination on the body of the deceased. The report had been prepared by Dr. Cheruiyot who had left the Kabarnet District hospital by the time of the hearing. That report showed the cause of death as severe haemorrhage secondary to assault. He admitted in cross examination that that report was altered in his presence by a police officer called Wambu. The alteration was on time to read 11.30 a.m. from what was recorded as 11.30 p.m. and the year to read 2008 from 2007.

The investigating officer was John Koech and he gave evidence as PW8. He visited the scene and found the body of the deceased which had deep cuts on the neck. He recovered a panga next to the body. His investigations revealed that the deceased and the accused were in a drinking spree when a quarrel arose between them when the accused demanded to be given a tin of busaa without payment. He said his informant was one Sharon Anyesi who said that the accused then used a panga and cut the deceased's neck killing her. He found the accused at the scene and arrested him. He produced the panga in evidence. He said he later witnessed the postmortem. In cross-examination he said that his informant later changed her story and said that she was not at the scene of the killing and therefore did not witness what happened and that is why she was not called as a witness. He said that in his statement he did not mention the tin of busaa that the accused demanded without payment.

In his defence he gave sworn testimony and said that on 6/12/2008 he was herding cattle. Between 1 and 2 p.m. he went to the house of Charles Chepkilot (PWW6) and on arrival he found a woman lying down dead. He asked what had happened and some men at the scene just beat him. He said that Jacob Buret (PW4) came to the scene after the accused had arrived. He added that PW3 Joseph Simba Chepkwony was not at Charles Chepkilot's house at all. He denied having killed anyone saying that he thought that he was suspected as he was the first man to arrive at the scene, all the rest at the scene being women. He denied ever having had a panga that day and said he only had a stick. On cross examination he maintained that he did not kill anyone and that PW3 was not at the scene and infact the witness saw him for the first time in court. He said that he was not even arrested by PW8 but by a different police officer from Kericho.

Submissions of Mr. Magare for the accused was that the case was not proved and accused must be acquitted as all there was was fabricated evidence by people who were not at the scene of the crime at the relevant time.

Senior State Counsel Mr. Chirchir for the state submitted that a charge of murder was proved as the offence was committed without provocation in broad daylight and was witnessed by two eye witnesses.

I have carefully considered all the availed evidence. The description of the scene and what actually happened was given by PW3 and PW4 and clearly those two accounts were so materially different that doubt is created whether or not these two witnesses were actually at the scene at the time of the commission of the offence. Whereas PW3 said that the accused was lying somewhere in the kitchen holding a panga and eating some raw maize and suddenly he awoke and rushed some 20 meters away to where the deceased was sitting on a foam and cut her twice on the neck, PW4 said that both the deceased and the accused were sitting together under a shade about ten meters away from the witness. They did not quarrel at all. Then he saw the accused cut the deceased twice on her neck killing her. Those accounts are materially contradictory. Further, whereas PW3 said that when he got to the scene there was no more busaa there, PW4 said that he had indeed served PW3 some busaa. PW5 admitted lying on oath. First she

said that she was passing by PW6's home (the scene) when she saw accused lift his panga and cut deceased then changed that later and said that in fact when she arrived at the scene the deceased was already dead and all she did was cover her with a piece of cloth. PW6 was away and only came home when he heard screams and found accused there with many other people. Contrast that with the testimony of PW3 who said that the accused ran away to his house after cutting the deceased dead. The doctor who produced the postmortem report admitted that it had been changed in his presence by a policeman called Wambugu – what was altered was the time and year when the report was made.

The investigator's evidence was distressing. He said that his investigations revealed that the accused and the deceased were on a drinking spree when they disagreed after a quarrel arose and the accused using a panga cut the deceased on the neck killing her. His informant was one Sharon Anyesi who later recanted what was stated in her statement saying that she was not at the scene and refused to come to court to give evidence.

Is this the type of evidence that would lead to a conviction for murder? There is no evidence whatsoever that places the accused at the commission of the offence. No one saw him kill the deceased. There is no circumstantial evidence excluding everyone else from committing that offence and pointing to the accused as the only person who could have committed the offence. Neither the *actus reus* nor the *mens rea* by and of the accused are proved. The standard of prove in murder is beyond reasonable doubt. The prosecution have fallen far too short of reaching that standard in his case. I find that there is no evidence whatsoever that connects the accused to the commission of the offence and accordingly I acquit him of the charge of the murder of Sarah Sogome Ruttoh. I order that he be set at liberty forthwith unless he is otherwise legally held.

**DATED SINGED AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF DECEMBER, 2010.**

**P.M. MWILU**

**JUDGE**

In the presence of;  
Magare - Advocate for Accused  
Present - Accused person  
Mr. Chirchir - Counsel for the State  
Grace Omiti - Court Clerk

**P.M. MWILU**

**JUDGE**