



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Case 27 'B' of 2009

REPUBLIC..... PROSECUTOR

VERSUS

1. NELSON KIPNGENO RONO}

2. DICKSON CHERUIYOT KIRUI

....}ACCUSED

RULING

I: Background

1. This is a Murder case. Nelson Kipngeno Rono and Dickson Cheruiyot Kirui are jointly charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. The particulars of offence being

On the 22nd day of September, 2007 at Tilango village in Bomet District of the Rift Valley Province jointly murdered Joseph Kipkemoi Too.

3. Both the accused pleaded not guilty to the charge. The prosecution called a total of ten witnesses to prove their case.

4. In brief, the two accused persons, PW1, 2, 4, 5 were all in the house of PW1 drinking illicit brew being Changaa and Busaa. The deceased also had some liquor to drink. From the prosecution evidence all these witnesses apart from PW1 the seller had been drinking Changaa the whole day from 10.00a.m in the morning. They did so at various places but finally ended up at PW1's place.

5. Kericho is an area and region that is rich due to the multinationals companies and tea plantations that provide a steady income for the inhabitant. Unfortunately most of the income used is spent on the illicit brew. This is the Kenyan culture where it has been reliably quoted in the Financial Journal of the Standard Newspapers Page 6 that “ *ten million Kenyans drink alcohol at an average rate of 12.5 litres or 25 bottles of (500m) annually*”

6. In this case PW1 sells illicit brew that is illegal, she sells a glass of “Changaa” brew for 40/= a cup.

7. On the day in question the deceased came into her house. There were over twenty people who came

to drink. It seems as if he passed out. Accused No. 1 took flour belonging to PW1 and mixed it with water and forced him to drink it.

8. PW1 said this was normal as it meant that every time someone was overwhelmed with drink a mixture of flour would be given to them.

9. Accused 1 and 2 are said to have escorted the deceased out – not to his home but to a relative.

10. The accused was found dead soon after and the last person to be with them was accused 1 and 2. The chief arrested them together with PW1. Later PW1 was released and made a witness.

11. The person who effected the arrest was the chief (PW7). He then handed the matter to the police.

12. A post mortem report was then written by a doctor Bii after he conducted a post mortem in the presence of PW8 a police officer and relative. This doctor failed to attend court. He is said to have left the government services and proceeded to work with K.E.M.R.I. His report was produced by another medical officer.

II: Case against the accused 1 and 2.

13. In his opening address the state informed the court that the motive by the two accused for murder was money. The accused had 100/=. There was a balance of 60/= after paying 40/= for the drink. He further went to say that the cause of death was through strangulation at the neck or asphyxia, secondary to the said strangulation.

14. PW1 in evidence said that the deceased paid her 100/=. She had no change and retained the moneys. Her intention was to pay him the moneys when she would return. The deceased never returned and she holds the change of moneys to date. The issue that monies was the motive of the killing does not now lie nor has it been established.

15. The other crucial evidence came from the post mortem report. The medical officer stated that the deceased had a swollen liver. He had cuts and bruises but more of these related to the strangulation. No injuries was found around the neck. The doctor never recorded that the tongue and finger nails were blue in colour - the cause effect where one is strangled. There was no broken neck.

16. This aspect of the evidence also does not lie and is not established.

17. The medical doctor one doctor Bii had left much to be desired in his medical report which can be interpreted as a false and untruthful report.

18. PW1 is a would be suspect. She had sold the brew the whole day to the witnesses and indirectly may have contributed to his death. The swollen liver is a sign of a malnutrition person or an alcoholic. Kenyans are called upon to cease or cut down on their consumption. If 1/3 of the population drinks we have an alcoholic nation raising an alcoholic generation who die in their early twenties -as did the deceased.

19. This is an unfortunate incident. The investigations should have first gone to an Inquest before charging the accused with murder. It was the chief who concluded who should be arrested and charged. The police belived the chief and took no further action on investigations.

20. I make and do rule that there is no evidence herein requiring the two accused to answer to the charges before court. I strongly recorded that PW1 be charged with selling illicit brew as per the Act relevant.

21. I hereby acquit the two accused. They are set at liberty unless otherwise lawfully held.

DATED this 25th day of March, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocate

R.K. Koech senior state counsel instructed by the Attorney General

for the state- present

J.M. Motanya advocate instructed by M/S Motanya & Co. advocates

for a the accuseds – present

Accused 1 and 2 – present