



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

Criminal Case 33 of 2008

REPUBLIC PROSECUTOR

VERSUS

WESLEY LANGAT KIPROTICH ACCUSED

JUDGMENT

I: Procedure

1. Wesley Langat Kiprotich, a young male adult aged 22 years old was arraigned before this Court for the offence of

Murder contrary to Section 23 as read with Section 204 of the

Penal Code.

2. That on the 4th July, 2008 at around 10.30p.m at Mesese village of Bomet District of Rift Valley Province murdered Leonard Kipkemoi Yegon.

3. A plea was taken on 25th September, 2008 before G.B.M. Kariuki J and a plea of not guilty entered. All along the accused maintained a plea of not guilty.

4. In Murder trials in Kenya, pauper briefs are used to defend accused persons. The trial advocate attempted to persuade the accused to plead to a lesser charge. This was rejected by this Court on grounds that too often pleas of lesser charge are entered to get out of hearing a full trial and obtain justice of an accused person.

5. This trial commenced from 11th March, 2009 and 16th March, 2009.

II: Background

6. The region within the jurisdiction of the High Court of Kenya at Kericho is rich due to the vast tea estates run by multinationals. The local average Kenya has more liquidity in terms of moneys compared to other parts of Kenya.

7. It is a well-known fact that ten millions Kenyans drink alcohol with the average Kenya drinking 12.6 liters (25-500ml bottles) of alcohol annually (*standard newspapers 24.12.09*) (*page 6 Financial Journal*).

8. The statistics for illicit brew isn't documented but an assumption may be made that this may be higher. The amount of illicit brew has damaged the youth and family fabric in this region.
9. It is therefore not surprising that on the 4th of July, 2008, the accused together with PW1, 3, the deceased and other men were drinking illicit brew. The deceased spotted a "metal nut head wooden" club which he then claim was his. A fight broke out between the deceased and the accused. The witnesses PW1 and 3 stated the deceased actually used the club to hit and beat up the accused. They left and went home to sleep.
10. Later that night PW4, the wife to PW3 heard screams outside calling out "'KK" come and help me'. PW4 woke her husband who came out and saw the deceased having been stabbed. He went and awoke PW1 who also came and saw the deceased lying down bleeding with a stabbed wound. It was then 10.00p.m. The deceased mother was called and the deceased was given milk to drink.
11. What was so incredible is that from 10.00p.m to 5.00a.m the accused laid there bleeding to death. One could only conclude that emergency health service are non existence in the rural areas.
12. The police were called and the deceased body was removed to the mortuary. The doctor who conducted the post mortem confirmed that the injuries sustained was in effect a stabbed wound inflicted by a knife. He did state that if the deceased had been taken to hospital he may have been alive to-day.
13. A witness was mentioned by another and this Court required his presence to Court. He gave evidence of reaching the shopping centre in question and finding the deceased alive and bleeding. He enquired what occurred but received information that the accused had stabbed the deceased. This Court cautions itself of this evidence on the grounds that the prosecution did not lead any of its witness to state to Court the dying declaration made by the deceased.
14. The accused conduct was one in which when he was being looked for he ran away. He went to PW2 an uncle and told him that he fought with the deceased as he wanted to take his property; probably the wooden "Iron studded nut" club. The uncle or relatives appear to have persuaded the accused to give himself up to the police which he did when he was rearrested.
15. From the prosecution witnesses the accused was a seller of illicit brew. The Court's witness denied this. The police broke into his house and found no illicit brew.
16. In his opening address the state said that the deceased went to the accused home for no apparent reasons. No evidence was led by any of the witnesses that the accused had an encounter with the deceased at his house. The crucial aspect is that the injuries sustained was that of a stabbed knife wound. The murder weapon was never recovered. The "wooden nut head" club was recovered and produced to Court as an exhibit but no injuries on the deceased was so inflicted.

III: Opinion

17. What was the motive of the murder? The prosecution tried to outline that it was due to a fight began at the drinking den. There was indeed an end to this fight. Who then caused the second fight?
18. There is doubt that this may have been inflicted by the accused. In his defence the accused stated that the deceased actually fought with, one Cornellius. The PW2 uncle and witness herein state that the accused said they had fought.
19. The prosecution are required to prove their case beyond any reasonable doubt. The chain of events is broken on the inflicting of the knife wound.
20. I would accordingly form the opinion that the deceased died as a result of injuries inflicted on him. That these injuries were in effect compounded by bleeding excessively, causing his death. That there is no evidence linking the accused to the stabbed knife wound or at all.

21. I find that accused not guilty of murder. He is set at liberty unless otherwise lawfully held.

DATED this 25th day of March, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

R.K. Koech Senior state counsel instructed by the Attorney General for the state

G.M. Maengwe advocate instructed by M/S G.M. Maengwe & /co. advocates for the accused

Accused person - present