



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

**AT KERICHO**

**CRIMINAL CASE 44 OF 2005**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**GEOFFREY KIPKORIR TONU.....1<sup>ST</sup> ACCUSED**

**BENARD KIPLANGAT TONU .....2<sup>ND</sup> ACCUSED**

**JUDGMENT**

The two accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the Criminal Code. The particulars of the charge stated that on 22<sup>nd</sup> day of November 2005 at Kapkisiara village in Bureti District within Rift Valley Province jointly murdered Simon Kirui. The prosecution in this case relied on evidence by nine (9) witnesses in their bid to prove the charge against the two accused persons.

Reuben Kiprono Chepkwony PW1 testified that on 22<sup>nd</sup> May 2005 while in his house, he heard people making noise. When he went to check, he found the 1<sup>st</sup> accused person and the deceased engaged in quarrel. Within a short while the 1<sup>st</sup> accused person hit the deceased using a jembe's stick on the head twice. People started screaming that is when the 2<sup>nd</sup> accused person ran from his house and came while armed with a metal bar. At that time, the brother of the deceased was trying to separate the 1<sup>st</sup> accused person and the deceased.

The 2<sup>nd</sup> accused person hit the brother of the deceased and that gave him a chance to hit the deceased on the head with the metal bar. Members of public gathered and started screaming, they tried to rush the deceased to the hospital, but he was pronounced dead on arrival at the hospital. PW1 identified the metal bar and the jembe's stick that was used by the accused persons to hit the deceased.

Violla Chebet PW2, who was at the scene when the deceased picked a quarrel with the 1<sup>st</sup> accused person, testified that on 22<sup>nd</sup> November 2005 she, was on her way home, she was carrying some pineapples for planting. She was walking with Geoffrey that is the 1<sup>st</sup> accused person. They met the deceased on the way. The deceased demanded some Ksh.20/- from PW2 which was for some sugar PW2 had taken from the deceased's shop on credit. Geoffrey told the deceased to leave PW2 alone but the deceased went on to demand for the Ksh.20/-. He demanded that PW2 should leave the pineapples that she was carrying. PW2 testified that she dropped the pineapples and run away.

Later on she heard people screaming, when she returned, she saw the deceased lying down and was

bleeding profusely. She testified that she saw the 1<sup>st</sup> accused person beating the deceased with a jembe stick. She also testified that she saw the 2<sup>nd</sup> accused person running towards the scene armed with an iron bar. There are people who came and started strangling with the accused person trying to snatch the metal bar. The deceased was taken to the hospital but in the evening, PW2 learned that the deceased had passed away.

Doctor Stephen Cheriot PW3 performed the post mortem examination on the body of the deceased on the 24<sup>th</sup> November 2005 at Kaptateti District Hospital. The body was soaked in blood. He had dip cuts on the head; the left blood vessel was cut and the left teproral bone. There was laceration of the brain matter. After post mortem, PW3 concluded the cause of death was due to external and internal hemorrhage caused by severe head injuries. PW3 also produced the P3 Form which was completed by Dr. Cheserem who had since left Kaptateti hospital. He had examined the mental status of the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons. It was noted that the 1<sup>st</sup> accused person had some injuries as a result of an assault. As far as the mental status of the 1<sup>st</sup> and the 2<sup>nd</sup> accused were concerned, they were certified fit to stand the trial of murder.

Charles Kirui PW5 testified that on 22<sup>nd</sup> November 2005 he was walking from his place of work to his house. On the way, he met the 1<sup>st</sup> accused person. He continued walking and after a short while, he heard people screaming behind him. When he went back where he had left the accused person, he found the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons armed with a stick and a metal bar beating the deceased who was lying on the ground. The 2<sup>nd</sup> accused person hit the deceased with iron bar when he tried to strangle with him to separate him from beating the deceased. He was able to identify both the iron bar and the jembe stick.

By that time many had people gathered at the scene, the deceased was bleeding profusely was first of all taken to Loreti medical centre but they were advised to take him to Iteni District hospital. However by the time they arrived, the deceased was pronounced dead. The matter was reported to the police who arrested the accused persons the same day.

Hannah Koech PW5 recalled that on 22<sup>nd</sup> November 2005, she was at home when the 1<sup>st</sup> accused person and the deceased started fighting. She found them fighting at the gate leading to their home. By the time PW5 arrived the deceased was already on the ground and the 1<sup>st</sup> accused person was beating him. The 1<sup>st</sup> accused person was armed with a piece of wood and was beating the deceased who was already on the ground. PW5 saw the 1<sup>st</sup> accused person hit the deceased five times. She was pleading with the 1<sup>st</sup> accused person to forgive the deceased. By that time the 2<sup>nd</sup> accused person was strangling with Charles. It is Hannah who informed the 2<sup>nd</sup> accused person that the 1<sup>st</sup> accused person was beating Simon. That is when the 2<sup>nd</sup> accused person snatched the metal bar from PW1. PW5 was categorical in her evidence that she did not see the 2<sup>nd</sup> accused person beating the deceased with the metal bar.

The deceased was left on the ground bleeding profusely and was assisted by some youth to go the hospital. The two accused persons were well known to PW5 as neighbors and so was the deceased. The deceased was taken to hospital by David Cheriot Sunei PW6. He was driving when he was stopped by the scene and members of public requested him to assist somebody who had been assaulted. He carried the deceased who was bleeding profusely on the head and took him to a private hospital in Loriet and left him there. He later learned that the deceased was taken to Iteni but passed away on arrival.

Wesely Kipsang PW7 was requested by members of public to take the deceased to Iteni hospital with his vehicle. However when they arrived the deceased was pronounced dead. PW7 also attended the hospital when a post mortem examination was conducted on the body of the deceased at Iteni medical hospital.

This matter was investigated by PC James Oroo while at iteni police station. He received a report from the area chief that the deceased had been injured. When he arrived at the scene he found the 1<sup>st</sup> accused person was arrested by members of the public, because the 1<sup>st</sup> accused person had injuries they escorted him to the hospital. By that time, the body of the deceased had been taken to the mortuary. On the same

day, the 2<sup>nd</sup> accused person was arrested. The following day the police visited the scene and collected the jembe stick and iron bar which he produced as exhibits. PW8 interviewed witnesses and recorded statements. He also visited the mortuary and saw the body of the deceased and confirmed the body had severe injuries on the head.

The 1<sup>st</sup> accused person had also sustained some injuries because he was beaten by the members of the public. This witness also attended the hospital when Doctor Cheriot performed the post mortem on the body of the deceased. He also escorted the two accused persons for mental assessment and charged them with the offence of murder. The body of the deceased was identified for purposes of post mortem by Benson Kirui. The deceased was his brother and was able to identify him when the post mortem was conducted.

Put on their defence the 1<sup>st</sup> accused person gave unsworn statement of defence and denied having committed the offence. He testified that on 22<sup>nd</sup> November 2005, he was traveling from Kericho on his way home he found pineapple seeds and heard a cry of a girl in the nearby bush. When he approached, he saw Charles and Simon raping a girl. He told them to stop that are when Charles jumped on him and hit him on the face. Charles dirked and instead he hit the deceased, the 1<sup>st</sup> accused person fell down and became unconscious. He woke up the next day and was arrested by the police who charged him with the offence of murder which he knows nothing about.

The 2<sup>nd</sup> accused person also gave unsworn statement of defence. He testified that on 22<sup>nd</sup> November 2005 he was working in his samba when his wife told him there were people screaming from the road. When he went to the road, he found the 1<sup>st</sup> accused person lying down with the deceased, each of them bleeding profusely. He testified that he carried Geoffrey and the other people carrying Simon and took them to hospital. The 1<sup>st</sup> accused person was treated and discharged. At about 8 p.m the police came to his house and arrested and charged him with the offence of murder. He claimed that PW1 Reuben Kiprono Chepkwony lied to this court because there is a grudge between him over the boundary disputes.

It is evident from the prosecutions evidence that the 1<sup>st</sup> accused person was seen assaulting the deceased by PW1, PW2, PW4 and PW5. They all testified that the 1<sup>st</sup> accused person was armed with a jembe stick which he used to strike the deceased several times. PW1 also testified that the 2<sup>nd</sup> accused person was armed with a metal bar and he saw him beat the deceased. This was also repeated by PW4 who even tried to strangle with the 2<sup>nd</sup> accused person to dis arm him of the iron bar and in the process the 2<sup>nd</sup> accused person hit PW4. By that time the 1<sup>st</sup> accused person continued hitting the deceased with the jembe stick. The deceased died as a result of these injuries inflicted by the accused persons and those injuries were confirmed by PW3 who conducted the post mortem examination on the body of the deceased.

This is direct evidence by several witnesses who witnessed the assault. I have also considered the defence by the accused persons which defence is a mere sham and has not dented the otherwise strong prosecutions case. For instance the 1<sup>st</sup> accused person testified that he was rescuing PW2 who was being raped by the deceased and his brother. PW2 however gave a complete different story. I find the evidence by the prosecution witness establishes that the deceased died as a result of injuries inflicted by the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons. The accused persons must bear the consequences of their own actions when they attacked the deceased viciously and an innocent life was lost.

I make a finding that the prosecution was able to prove the charge of murder to the required standard. Both the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons are hereby convicted of the charge of murder contrary to section 203 as read with section 204 of the penal Code.

JUDGMENT READ AND SIGNED THIS 25<sup>TH</sup> JUNE. 2009.

**M.K. KOOME**

**JUDGE**