



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

**Criminal Case 38 of 2008**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**ROBERT CHERUIYOT ..... ACCUSED**

**JUDGMENT**

**I: Background**

1. On the 29<sup>th</sup> September, 2008 PW3 Bernard Kiplangat Kimetto was walking along heading to Litein when at about 4.00p.m he heard two persons quarrelling. He looked as he passed by and over heard that the quarrel was over trespass. The accused one Robert Cheruiyot was threatening the deceased one Daniel Kipronoh Tanui not to pass through the land he was in.
2. As the quarrel hightened the accused who held a cutless (*panga*) in his hand struck the deceased who fell down. The accused ran away and the deceased was lying on the ground bleeding from his head where he had been cut to the side.
3. The deceased was taken to a clinic and afterwards to the Hospital at Kericho. He was looked after with his brother PW1 David Too at his side. On 6<sup>th</sup> October, 2008 succumbed to his injuries and died in Eldoret where he had been referred for further treatment at the hospital there.
4. The accused had by now been arrested with the offence of causing Grievous Harm as stated in the Penal Code when the deceased passed away he was recharged with the offence of murder contrary to **Section 203** as read with **Section 204** of the penal code.
5. **That on the 25<sup>th</sup> September, 2008 at Kaplelwo village Kiptere location in Kericho District of Rift Valley Province he murdered Daniel Kiprotich Tanui.**
6. The accused pleaded not guilty. He was taken for mental assessment and found to be normal.
7. In his defence (*unsworn*) he stated that he had been arrested and first beaten. He mentions nothing of the incident that occurred.
8. The state submitted that they have proved their case before court beyond a reasonable doubt. The advocate for the defence stated the accused was intoxicated and could have been provoked to commit the

offence.

### **III: Opinion**

9. The prosecutions have established that the deceased was inflicted with an injury sustained as a result of being assaulted by the accused. They further called evidence of a nurse PW2 Andrew Kipkoirr who treated the deceased on the same day of 25.9.08. He stated that the deceased was bleeding heavily as a result that he actually was in a very serious condition. The injuries sustained was to the side of his skull.

10. DR. Wekesa Nyalo attached to the Moi Referral Hospital conducted a post mortem on the deceased. He described the deceased as a male adult aged 31 years old. He had a healed scar on the side of the head. He confirmed the trauma to the said left side of the head resulting to the death of the deceased.

11. The death of the deceased having been so established did this amount to murder?

12. It is trite law that when one is inflicted injury does not die immediately the law would term murder where such a person dies within 12 months and a day. In this case the deceased died on 6.10.08 almost 17 days later.

13. If the deceased had died 12 months and a day thereafter then the inflicting of such injury would not be termed as murder.

14. I have herein noted that the accused stated nothing on the case in his defence save that he was beaten. The advocate for accused stated from the bar that the accused was provoked. There was evidence the deceased was intoxicated.

15. The fact though remains in my opinion is that the deceased was not harmed. There was no motive of provocation save an issue of trespass where no history that this occurred every day to provoke the accused who mentions nothing of this.

16. I accordingly find the deceased was inflicted injury by the accused causing him Grievous Harm. That this injury later causing his death amounts to Murder. I find the accused guilty as charged.

**DATED** this 9<sup>th</sup> day of June, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

R.K. Koech Senior State Counsel instructed by the Attorney General for the State – present

W.R. Kiprono advocate instructed by the firm of M/S W.R. Kiprono & Co. advocates for the accused – present

Accused – present

**27<sup>th</sup> July, 2009**

**Note for file**

Offender died two weeks later in prison custody but at the District Hospital at Kericho.

Inquiry file order to be opened. **Section 387 Criminal Procedure Code** applies.

**M.A. ANG'AWA**

**JUDGE**