



**IN CAMERA**

1. Criminal Law
2. Murder
  - a. Deceased young adult aged 21 years old.
  - b. on 21<sup>st</sup> September, 2008 deceased mentions difference with subject and take weapons from him rungu club nut and semi/sword
  - c. Subject not mentioned but less than ½ an hour and person came and knocked deceased to left portion of head with stick ran and disappeared.
  - d. Deceased still alive taken to hospital but later passes away.
  - e. PW9, a prison warden a relative to deceased find subject in his house. Reports to police.
  - f. Subject arrested PW6 and 7, police later handed to investigating officer.
  - g. Subject arrested and charged.
  - h. Normal procedure to have mental and age assessment done for subject.
  - i. Deputy Registrars unable to do so.
3. **Defence**
  - i) Asked grandmother to borrow moneys.
  - ii) Arrested whilst in Philip's house by three others and charged.
  - iii) Doesn't know anything of exhibit.
4. **Held**
  - i) Murder established
  - ii) As subject a minor procedure of sentencing different.
5. **Case Law**
6. **Advocate**

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & Co. advocates for the Accused - present  
P. Kiprop State Counsel instructed by the Attorney General for the state – present  
Accused - present

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT KERICHU  
Criminal Case 36 of 2008

REPUBLIC .....PROSECUTOR  
VERSUS  
GEOFFREY KIBET ROTICH ..... ACCUSED

**JUDGMENT**

**I: Charge**

A) **Murder** contrary to **Section 203** and **204** of the Penal code.

**B) Particulars of offence**

***Geoffrey Kibet Rotich On the 20<sup>th</sup> day of September, 2008 at Kiptulwa shopping centre in Bomet District within Rift Valley Province murdered Sephania Kiplangat Rutto.***

**I: Background facts**

1. On the 20<sup>th</sup> day September, 2008 Sephania Kiplangat Rutto was at a shopping centre in Bomet known as Kiptulwa. He was a young adult aged 21 years old and ran a shop. At around 7.00p.m he screamed out in anger. PW3Jeremiah Kimutai Busiemai heard those screams ten meters away. He approached Rutto who informed him that one Geoffrey Kibet Rotich had annoyed him. He had taken from the said Geoffrey a wooden club attached to its end with a large bolt nut together with a sword commonly known as a simi. PW3 managed to persuade Rutto to close his shop and go home. Rutto closed his shop and as the two began to walk away with Rutto carrying the two items of weapon, a person suddenly appeared with a stick and hit Rutto on the head. Rutto collapsed and fell on the ground. That person ran away.
2. David Kibet Mutai, PW4 heard those screams about 70 metres away. He approached Rutto whom he was informed had a disagreement with Geoffrey Kibet and had taken the said club and sword from.
3. Members of public rushed the said Rutto to hospital. These were PW10 and PW5 both minors aged 10 and 13 years old who were attracted to the scene due to the screams.

4. PW4 remained behind because of the weapons. No one wished to take possession of the said weapons. He took possession of the club, sword and the stick used to hit the deceased Rutto. He hid them safely and later handed them over to the police.
5. The said Rutto succumbed and died as a result of the injuries sustained on him. This was on 22<sup>nd</sup> September, 2008. He then had a post mortem performed upon him by Doctor James Amisi Akiringa on 24<sup>th</sup> September, 2008 at 4.00p.m who stated the cause of death was due to “*severe head injury with extensive subdural haemorrhage secondary to head trauma*”.
6. As the name of Geoffrey Kibet Rotich had been mentioned by the deceased he was a suspect. His relative PW9, Warden Philip Korir NO. 21195 attached to the G.K. Prisons at Bomet heard of the incident from the neighbours in the village. He later learnt that Geoffrey Kibet was hiding in his house. He went there and informed him to take supper and to wait for him. PW9 went to the police station and made a report. Geoffrey Kibet was then arrested from his house.
7. As the deceased passed away, Geoffrey Kibet was charged with murder on 7<sup>th</sup> October, 2008 (Karuki J).

## **II: Procedure**

8. An issue arose as to the age of Geoffrey Kibet Rotich. Was he an adult or a minor? On 3<sup>rd</sup> November, 2008 this court (*Ang’awa j*) ordered that there be an age assessment report with the prosecution claim he was thirteen years old, whilst the defence claimed he was fifteen years old. His mental fitness had also not been undertaken.

9. The age assessment was not able to be done as the X-ray facilities at the District Hospital Kericho had broken down. As to the psychiatric report, there was no psychiatric doctor attached to the hospital at Kericho. It was not until 2<sup>nd</sup> March, 2009 that a report was availed.

10. This court treated Geoffrey Kibet Rotich as a subject. The proceedings were all held in camera.

### **III: Defence**

11. The subject informed this court that he informed his grandmother of the need to borrow Kshs. 200/=. She told him to await till 2.00p.m. When he then left and went, he passed by PW9, Philip place. He was requested to spend the night. There he saw Philip come with three others to arrest him. He denied ever having been in possession of the club and simi.

### **V: Submissions by the advocate for the subject.**

12. That there was no case to answer that the said subject should be called upon to answer. The one reasons above is that the subject had been detained in the police custody for fifteen days instead of fourteen days. This alone is sufficient to have the subject acquitted.

13. The prosecution herein claimed that there was required a reasonable time to be brought to court and this was duly done. The defence, when given, was a mere denial by the subject.

### **VII: Opinion**

14. Detention over the fourteen days period was raised by the defence. This was a surprise by the said advocate for the State. Nonetheless, I shall deal with it as this stage of the judgment.

15. The rules alluded to are found in the constitution of Kenya. Under rules made by the Hon. the chief Justice under **Section 65(3)** and **Section 84(6)** of the said Constitution being Legal Notice 6 of 2006.
16. The rules are entitled the constitution of Kenya (*supervisory jurisdiction and protection of fundamental rights and freedoms of the individual*). High Court practice and Procedure Rules 2006.
17. Where a party wishes to invoke the jurisdiction of the High Court an originating notice of motion may be filed in FORM “A” of the schedule of rules. That would state the concise grounds upon which such fundamental rights of the applicant have been contravened supported by an affidavit. The registrar within seven days shall place such a motion before the Hon. Judge for directions.
18. Where a case exists whether under criminal law or civil law then in the High Court need not file a motion but the court who is seized with the matter may treat such issue as a preliminary point and shall hear and determined the same. Rules 23.
19. It is through, to the interpretation of this court a Petition should be filed within the same suit by way of notice to enable the Attorney General in criminal cases and the respondent in civil case to respond to the said notice at a date set down for arguing of the same matter on the contravention of constitutional rights by the parties but as a preliminary objection.
20. In this case it is not acceptable to casually mention the contravention of constitutional rights within the submission without notice nor question put to witnesses on this point. I would reject this submission on the point

raised.

21. The case before me is whether the subject caused injuries to the deceased as to cause his death? I would find in my opinion that the subject had provoked the deceased and weapons taken from him. I would accordingly hold the circumstances of the event whereby the subject was named. His attempt to hide in PW9's quarters and motive.
22. I can only conclude that the subject indeed assaulted the deceased causing his death. The circumstances here in point to the subject.
23. As to the minors mental status **section 11** of the Penal Code provides every person is proved to be of sound mind and to have been of sound mind at any time which comes in question until the contrary is produced. This was never raised as a defence by the subject. **R V C.W. Ross(1932) 14 KLR 48.**
24. I hereby find the subject guilty of the offence of murder contrary to **section 203** of the penal code.
25. That under **Section 206**, a subject had an intention to do grievous harm to the deceased thus causing his death a few hours later.
26. As to **section 204** of the penal Code, this is not applicable to a minor. The subject alleges he is a minor. **Section 204** states any person convicted of murder "*shall be sentenced to death*". Under **Section 190(2)** of the **Children Act No. 8/01** it states that no child shall be sentenced to death. This has been the position in these courts from time in memorial. See the **R V Elka** case (*concerning the Joy Adanson Murder*) where the offender was a minor. The procedure of sentencing minor is therefore different according to age. The minor is found guilty.

**DATED** this 3<sup>rd</sup> day of August, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocate**

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & Co. advocates for the Accused - present  
P. Kiprop State Counsel instructed by the Attorney General for the state – present