



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Case 25 of 2007

1. Criminal Law
2. Murder
 - a. Male adult accused No. 1 aged 65 years old mentally fit.
 - b. Male adult accused No. 2 aged unknown mentally fit.
 - c. Both related to each other as brothers.
 - d. Wife to accused No. 1 Lucy Chepkoech Ngeno (*now deceased*) found in tea bushes on 5.5.07 Chebowon Tea estate murdered.
 - e. Investigation reveals that body murdered elsewhere and placed within tea bushes.
 - f. Soil sample within area had no blood stains.
 - g. Blue had and a yellow jacket found with same blood stains as blood group of deceased.
 - h. Conduct of accused No. 1 towards deceased:- relationship very bad since 2002.
 - i. Deceased restrained accused No.1 one from selling properties and a vehicle regularly.
 - j. Result, they moved into a mud hut kitchen whilst accused slept in a stone house.
 - k. Frequent assault on deceased together with his brother.
 - l. Deceased considered stubborn.
 - m. Last stopped accused No. 1 from selling properties in April, 2007.
 - n. Threats by accused No. 1 towards deceased – “I will kill you”.
 - o. Children to deceased witness these abuses but did not think it serious.

3. **Defence**

I) **Accused NO. 1** – informed of deceased’s death and was shocked.

i) Called DW3 and 4 husband and wife who came to notify him.

II) **Accused NO. 2**

i) Was alone from morning hours to 1.00p.m

ii) Rain continued till it stopped.

iii) Young men informed him he wishes to proceed to the shops and would follow.

iv) When he did he found neighbours informed that wife of brother died.

v) Advised to go back home.

III) Witness DW5 brother to deceased – relationship with deceased and brother had since the retirement of accused No. 1.

She was a difficult woman.

4. **Held**

Accused No. 1 found guilty

Accused No. 2 found not guilty

5. **Case Law**

6. **Advocate**

P. Kiprop State Counsel instructed by the Attorney General for the state – present

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & Co. advocates for the accuseds – present.

Accuseds - present

REPUBLIC PROSECUTOR

VERSUS

MOSES KIPRONO NGENO1ST ACCUSED

MARTIN KIPNGETICH NGENO2ND ACCUSED

JUDGMENT

I: Charge

1. Murder contrary to **section 203** as read with **section 204** of the Penal Code.
2. That on the 5th May, 2007 at Chebown /Tea Estate in Kericho District within Rift Valley Province jointly with others not before court murdered Lucy Chepkoech Ngeno.

II: Facts

3. Moses Kiprono Ngeno and Martin Kipngetich Ngeno are related to each as brothers.
4. They are also related to one Lucy Chepkoech Ngeno (*deceased*) as widower and brother in law respectively.
5. The evidence from the prosecution witness more so from the son and daughter (*PW4 and PW6*) to Moses Kiprono Ngeno was that since the year 2002, presumably when Moses Kiprono Ngeno retired from his formal employment and came home, the relationship with his late wife Lucy had been stomy. She moved out of the house and went to live in a mud but Kitchen. Whilst her husband lived in the stone house.
6. At her death the doctor described her condition as malnutrition and of poor health (*PW2*).
7. The main contention between the two of them was that Moses Kiprono Ngeno would sell off family land. He would then do so without consulting the family. He then bought a vehicle registration KAD 023G from the proceeds, then attempted in April, 2007 to sell the same. The late wife took issues to this.
8. It was therefore a shock to the children to be informed that their mother was found in the tea plantation dead on the 5th May, 2007.
9. The deceased herein was said to have been assaulted by her husband and his brothers frequently. It was also said that the said husband would give her treats of words such as "*I will kill you*". *PW4* the son stated in court that he would never imagine that this would come true. He never lived with his father but got married without informing him and lived 1 ½ kilometers away. He then witnessed the post mortem of his late mother together with his maternal grandfather (*PW8*). *PW8* received the message of his daughter's death the same day and managed to travel to confirm the same.
10. The daughter to the deceased *PW6* Diana Chepkemoui described the poor relationship the parents had. He often heard her father tell her mother "*I will kill you*".
11. The motive of murder according to the prosecution case was that of the poor marital relationship between the parties. That the deceased herein resisted any sale and or property of the land by the husband which meant with resentment.
12. On the material day of 5th May, 2007 there was a down pour at about 2.00pm. *PW9*, a female adult Sarah Chepkemoui who worked in the estate as a tea plucker informed the court how she waited under a shelter until the rain subsided. When it did she began her journey home on foot. She noticed a blue and white cloth protruding from under the tea tree bushes. Out of curiosity she looked and found the body of Lucy Chepkoech Ngeno the deceased, who was not known to her. She rushed to the main road and stopped a tractor *PW2* David Kipkoech Ngetich, a security man working with the estate. *PW3* gave evidence to confirm this. When he realized there was a dead body he contacted *PW10*, the welfare personnel who came to the scene.
13. The crowd gathered and the police began their investigations.
14. Witnesses were called who confirmed that soon thereafter at around 12.30pm a tall person was seen wearing a yellow jacket coming from the area where the body was found with the tea.
15. These witnesses separately saw this were *PW5* John Siwa Cheporia who noticed someone walking

very rapidly wearing a yellow jacket. PW11 Eunice Rono saw someone wearing a yellow Jacket leave the scene.

16. The police were therefore looking for this suspect with the yellow jacket.

17. As they began investigations it transpired at the scene a yellow jacket was recovered. They further received information of a knife recovered in the trench by PW7 Keneth Cheruuiyot Koech, a labourer,. He found the knife on 20th June, 2007 at 7.00p.m.

18. PW12 the scenes of crimes officer called the scenes of crime and had the exhibits being a yellow jacket, the knife, soil from the scene he forwarded to the government analysis. a second jacket was recovered when the sister to the deceased one Betty Koech on 29th June, 2007 at 12.30 – she went to see her sister’s son. On the way she then passed by the brother –in laws place of Martin (*accused No. 2*). She noted a yellow jacket that had been washed and spread on the plants to dry. She made a report to the police and there the jacket was taken possession of. This jacket had red stains. The said jacket as stated earlier was forwarded to the government chemist for analysis. PW14 took the body to the mortuary.

19. The conclusion of the government chemist PW18 was that the blood sample of the deceased was “O” matched the blood sample of a blue hat and a light yellow jacket marked “A” and then and had marked “D” respectively. There was no blood on the soil, kitchen knife or the beige soiled jacket.

20. The conclusion could therefore mean that there was indeed a murder that occurred but elsewhere and the deceased was actually brought to the tea bushes. These bushes were intact and there was no struggle.

21. Both the two brothers were charged with murder of the deceased which they denied.

III: Defence

22. In his evidence the widower/accused No. 1 never mentioned his differences with his late wife. He first mentioned the events leading to how he had been informed of her death by DW3 and 4 the neighbours.

23. The accused No.2 also spoke of the events that led him to know of how the deceased was found dead in the tea bushes.

24. Surprisingly their brother DW5 came to give evidence. It was he who said the deceased was a very difficult woman and would not allow the accused No. 1 to manage his own affairs. She was a “*Kali*” or difficult woman.

25. It was therefore DW5 who brought it to light and confirmed the difficulties that the accused No. 1 had with the deceased.

26. Therefore the defence according to accused No. 1 and 2 allegiance but evidence from DW5 clearly shows there has been some dispute between accused No. 1 and the deceased to basis a motive of murder whilst accused No. 2 is linked to the murder through a recovered yellow jacket.

IV: Opinion

27. The prosecution must prove that the deceased Lucy Chepkoech Ngeno had died. They did this when the investigating officer PW16, the other police officer PW4 and PW12 visited the scene and recovered the body of the late Lucy Chepkoech Ngeno.

28. A Post mortem was conducted by a medical pathologist officer. PW2 Dr. Kibet Peter Shikuku MBChB, Masters in human pathology. He performed a post mortem on the deceased a female African aged 45 years old.

29. She was found to have wounds on her chest and back that penetrated to her heart. The lungs had collapsed.
30. The other aspect that the prosecution must prove is that the death was caused by the two accused persons.
31. The evidence before court is that of circumstantial evidence. The prosecution has proved and it has been established by the defence witness DW5 that the motive for murdering the deceased by accused No. 1 was due to matrimonial differences. This indeed shows that the accused No. 1 with others no before court did and indeed cause the murder of the deceased.
32. The evidence of the jackets are linked to accused No. 2. That he indeed was found having a yellow jacket on his garden washed on some plant. There was an indication that this jacket may have been placed there.
33. I have noticed that there were these jackets. One recovered from the scene where the body was on 26th June, 2007. This was recovered on top of the tea plantation. Three days later on 29th June, 2007 PW16 received information from PW1 of another jacket. This was submitted also to the government analysis.
34. According to the report the jacket linked accused No. 2 to the murder. It was not possible to do a DNA test as the test machine had been broken down for a considerable long time. There was therefore only the first jacket recovered that confirmed the blood group on it matched that of the deceased. The identification of who wore the jacket differed with the witnesses was it the first or second jacket yet the jacket was only one.
35. This could give the benefit of the doubt to the accused No. 2. The evidence against him has not been established beyond any reasonable doubt and he is hereby acquitted unless otherwise lawfully held.
36. The evidence against the accused No. 1 is overwhelming. He is found guilty unless and is according convicted for the offence.

DATED this 3rd day of August, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

P. Kiprop State Counsel instructed by the Attorney General for the state – present

K.L. Kipyegon advocate instructed by the firm of M/S K.L. Kipyegon & Co. advocates for the accuseds – present.

Accuseds - present