



1. Criminal Law
2. Subject of main case
 - (a) Murder contrary to **Section 203** as read with **Section 204** Penal Code.
 - (b) Particulars of offence

On the night of 31st October 2008 and 1st November 2008 at unknown time at Kaitui Centre in Kericho District of Rift Valley Province murdered Winny Chepkorir.
 - (c) Plea; Not guilty.
 - i) Accused and deceased friends.
 - ii) Went out drinking. 31.10.08.
 - iii) On 1.11.08 accused goes to deceased's cousin PW2 who has shop and ask for milk.
 - iv) PW1 states he was busy at shop but will get milk.
 - v) informed milk for Winny Chepkorir.
 - vi) asked accused if he beat the deceased.
 - vii) Accused leaves and independently gets milk elsewhere.
 - viii) abandoned is where deceased body found.
 - ix) Medical evidence; cause of death - head injury, trauma to the left side of head. Fracture of skull, left ear.
 - x) Post-mortem witnessed by PW3 & 4.
 - xi) PW5 chief informed of death.
 - xii) PW6 scene of crime.
 - xiii) PW7 Investigating officer, suspect surrenders to police.
3. Case Law;
 - By State Counsel; Nil.
 - By Advocate for accused:
 - a. Peter Obino Nyakundi v R. CA.194/02 (Omolo, Githinji jj, Otieno-Onyango ag. ja)
 - b. Ali v R [1990] KLR 154 (Githinji j).
 - c. R v Ali Hamisi Juma & Anor. (Cr. Case 1/02)
4. Advocate;
 - E. K. Kosgey Advocated instructed by the firm of E. K. Kosgey & Co. Advocates
 - P. -- Kiprop State Counsel instructed by the Attorney General for the State

REPUBLIC OF KENYA
IN THE HIGH COURT
AT KERICHO

2008

REPUBLIC

-

PROSECUTOR

VERSUS

PETER KIPKURUI BETT

-

ACCUSED

JUDGMENT

1. Background

1. On the night of 31st October 2008 Peter Kipkurui Bett was in the company of Winny Chepkorir. She was his girl friend.
2. They had gone out for the night within the Kaitui Centre in Kericho.
3. On the 1st November 2008 the accused was the one who went to PW1, a cousin to Winny Chepkorir and asked hat he gives him milk. PW1 owned a shop and has customers. He was busy but told him he had no milk. He was requested to obtain milk on credit for him. He agreed but later when PW1 finally took upon himself to go and fetch the milk, he found the accused had already gone to fetch the milk for himself.
4. He proceeded to where the accused told him they were staying. Whilst at the shop the accused had said the milk was intended to be for Winny. He did ask if he beat her as their relationship was stormy.
5. When he went to the building where the accused said he was with Winny, he found Winy had died. The accused had left. The building was a deserted building and had not been a used as a building.
6. The chief was notified. PW5 said PW3 called him. He contacted the police and visited the scene. The police came also and visited the scene and took photographs. They then carried the body to the hospital where a post-mortem was undertaken.
7. PW3 stated he was a brother to the deceased and knew that the deceased and accused were friends. PW4 a relative who was notified of the deceased's death by PW3 stated that the two were friends, namely the deceased and accused but it was a strong relationship.
8. The Medical Officer PW2 stated that she conducted a post-mortem report on the body of the deceased. The cause of death being a cracked skull to the left side of the head.
9. The cause of death being a head injury.

II. Defence

10. In his defence the accused admits having been with the deceased that night in question. They were friends.
11. He had gone to the night club after work and drank Chang'aa till 7.00 p.m. He left with the deceased and drunk with her. That they had

lived together for two years. They had drunk the two of them but he could not recall how long. When they went outside of the bar they were attacked by 3 persons. They wanted to elope with the deceased. They struggled. He told her that they hide in the (*disused shelter*) till these persons left. After ½ an hour it began to rain. They dozed off.

12. In the morning she could not respond. He was under the impression that she was intoxicated so much she could not recover from her slumber. He went to look for milk. He went to Joseph – PW1 and asked for milk. He asked him why he wanted the milk. He told him he wanted to give it to the deceased as she had taken a lot of alcohol.
13. They were unable to wake her up.
14. He went home first to make a report of death. He then went and surrendered to the police.
15. He was put in the cells.

III. Opinion.

16. There was a unique relationship between the deceased and the accused person.
17. The question arises as to whether the accused deliberately murdered the deceased? The action by the deceased was one in which he went to seek for help for the deceased on the impression that the deceased was suffering from intoxication. He went to look for milk. He surrendered himself to the police.
18. I do not think that the accused deliberately and intentionally committed the murder. He is a person who stated they had drunk together and in the morning she did not awake. I do not believe there were persons who attacked them at night and explain why they were sheltered in the temporary structure?
19. The accused had been alone at all this, with deceased and the whole night. When morning dawned she had died. No one else but the accused was with her.
20. I would hold him responsible for her death.
21. Due their unique relationship I would find the offence of manslaughter be substituted. I convict the accused; find him guilty of the offence of manslaughter.

Dated this 23rd day of November 2009 at Kericho

M. A. ANG'AWA

JUDGE

Advocates

- E. K. Kosgey Advocated instructed by the firm of E. K. Kosgey & Co. Advocates for the accused.
- P. Kiprop State Counsel instructed by the Attorney General for the State