



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Criminal Case 19 of 2002

REPUBLIC PROSECUTOR

VERSUS

HENRY KATAP KIPKEU ACCUSED

JUDGEMENT

The Accused was charged with the offence of murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars of the charge were that on the 27th February, 1999 at Kipkaren Estate in Eldoret Municipality of Uasin Gishu District within the Rift Valley Province, murdered JOHN CHERUIYOT SUTER.

The prosecution called eight (8) witnesses. PW 1 a kiosk owner stated that on 27th February, 1999 he was in his house. His cousin, John Cheruiyot Suter the deceased came to him and asked him to go for a walk. When they reached the gate of the compound they met accused Henry Katap Kipkeu. PW 1 said that the accused had a knife which was one foot long. He had it in his raised arm. That the deceased asked him what the knife was for. PW 1 said that the deceased asked the accused what the knife was for. That the accused responded, “**Hata wewe ni mwingine**” which in English means “**Even you are another one**”. That the accused then stabbed the deceased with the knife in the stomach. It was during the day. The deceased started bleeding. PW 1 took him in a taxi to Memorial Hospital. On cross-examination he said that at the Hospital he did not go into the theatre but he remembers that there was a power black out. It lasted for about half an hour after which the power came back. The deceased died on 5th March, 1999.

The matter was reported to the Police. PW 1 said that they could not find the accused. However he was arrested on 12th December, 2001. That he was found in Chukeon in Marakwet by an Administration Officer and the Chief. PW 1 and the accused lived in the same plot. PW 1 knew the accused for two years. The deceased live in a nearby plot. PW 1 said that the accused knew what he was doing and he was a man who liked quarrelling people.

PW 2 was a brother of the deceased. On 27.2.1999 he was informed of the death of his brother. He worked with the accused. His brother was in hospital for 4 days after which he died on 5th March, 1999. He is the one who reported the death to the Police. PW 2 said that the doctor told him that the deceased’s large intestine had not been operated upon. He said that Dr. Koslova who carried out the post mortem told him that the small intestines had been stitched. She said that the failure to operate on the large intestines could have been due to power black out.

PW 3 told the Court that at about 4 p.m. on the 27th February, 1999, he was in his room in the compound where the accused lived. His room was No. 3 while the accused’s was No. 4. He said that he had people talking and a door banging. He saw the accused wife Phylis. She came into his room and told him that “**Kipkunur**” referring to the deceased had been stabbed. The PW 3 looked through the window and he said that he saw the deceased pull up his shirt. He had a wound in his stomach. PW 3 said that he saw the accused next to the deceased. He had a knife in his hand. He was wielding it in the air. That he said in Kiswahili “**mimi naweza ua mtu**” meaning “**I can kill someone**”. The deceased started bleeding. That the accused then ran away through the gate. He said that the deceased and accused were about 6 feet from his window. The place they were was in front of his house. He went outside. That the deceased asked for water. The deceased went down and he did not get up. He was taken to Hospital where he died after a few days. He knew that the accused ran away until he was arrested more than one year later. He did not know of any quarrel between the deceased and the accused.

PW 4 was the deceased brother. He was informed of the incident. He went to the Hospital and found the deceased in

critical condition. He did not witness anything else.

PW 5 was the Sub-Chief of Kipyebbo Sub-Location in Marakwet. On 12-12-01, there were Jamhuri celebrations at his Sub-Location at a place called Chesedan in Kibaiwa Location. The Chief asked him to arrest a suspect in a hotel. He was wanted by the Police. He went with the Chief and another Sub-Chief from Lukuget Sub-location. They found the accused and arrested him. When arrested he had weapons – a panga and arrows.

PW 6 was a Police Constable stationed at Eldoret Police Station. On 5th March, 1999 he received news of the death of the deceased from one Reuben Koech. He told him that the deceased had been stabbed on 27.2.99 while at Kipkaren Estate. He recorded the report in the occurrence book. Together with other policemen he went to the Hospital and saw the body of the deceased. It was removed to the mortuary. It had a bandage on the lower part of the abdomen. On the same day, the doctor performed the post-mortem on the body in his presence. The doctor told him that the deceased had died from stab wound. A sharp object was used. There was no other injury.

The next day he went to Kipkaren Estate. He looked for the accused but he was nowhere to be seen. According to his investigation, the deceased and accused had been drinking. They had been seen in the Estate on the material day. They quarrelled. The deceased and one Koech left the Accused and went to their places of residence. It was shortly after that at the compound of Reuben Koech that while armed with an object like a pen-knife that the accused stabbed the deceased. There had been no exchange of words. The accused ran away with his knife. PW 6 added that he continued to look for the deceased but in vain. He heard that the accused may have gone to his home district, Marakwet.

PW 6 said that on 12.12.2001 the accused was traced and arrested. He said that he found that the accused and deceased were friends, worked together at the Eldoret Municipal Council and were both from Marakwet.

PW 6 said that he did not know of any motive for the attack. He said that the family of the deceased helped in tracing the accused.

PW 7 was a brother of the deceased. He was told about his brother having been stabbed and was in hospital. He went to see the deceased.

PW 8 was Prof. Koslova, who carried out the postmortem on the deceased's body on 5th March, 1999. She said that he had been stabbed on the chest. The wound penetrated through the diaphragm into the abdominal cavity with damage of intestine. The wounds were surgically stitched. Cause of death was bilateral haemorrhagic pneumonia.

She said that the operation on the deceased had been successful. There was no negligence on the part of the doctors. She said that it was the small intestines which had been repaired. That the large intestines were intact and did not require any repair. That he died from complications arising from stab wounds.

Upon careful consideration of the prosecution witnesses and the accused, their demeanour, credibility and veracity in Court and considering both Counsel's submissions, I do find and hold that:-

- The Accused and the deceased were friends and neighbours.
- They both hailed from Marakwet District and worked for Eldoret Municipal Council.
- On the material day, 27.2.99, the Accused, deceased and others had been drinking alcohol. They picked a quarrel. It was said by PW 1 that the Accused was a quarrelsome person who like quarrelling others.
 - The drinking mates left each other.
- The deceased went to PW 1 house and while they were leaving to go for a walk, the accused came through the compound gate.
- That without any provocation from the deceased, he came in anger and shouted at the deceased.
- At the material time, the accused had a knife in his hand.
- He then stabbed the deceased with the knife. He stabbed him on the frontal side of the body. PW 1 thought it was the stomach.
- PW 8, the Pathologist found that indeed the stab wound was through the lower chest into the abdominal cavity.

- PW 3 was another eye-witness. The accused wife ran to his room and told him that her husband had stabbed. The accused wife ran to his room and told him that her husband had stabbed the deceased. When he looked out he saw the deceased pull up his shirt checking on his injury. PW 3 saw the stab wound. The deceased fell to the ground.
- The Accused immediately ran away. He ran with the knife.
- The deceased was taken to hospital where he died on 5.3.99, less than a week later.
- I do find that the Accused attacked the deceased using a small knife and the deceased sustained injuries to his chest and stomach.

The doctor confirmed that the deceased died from injuries caused by the sharp object. The cause of death was damage of intestines leading to haemorrhage.

I do hold that the deceased died from the said stab wounds a few days later. The accused inflicted the wounds.

I find that the accused attacked the deceased. After quarrelling with the deceased, they parted ways. He had time to cool down if at all the alcohol was affecting him. Later after a period where he could have cooled down his anger, he went and armed himself. He then left whenever he was and went all the way to look for the deceased. He found him in his compound. He was wielding the knife. All this conduct shows preparation and malice aforethought. He then went to the deceased and stabbed him declaring his intention to kill somebody. The accused knew what he was doing. He had malice aforethought.

I find and hold that the prosecution had proved offence of murder beyond any reasonable doubt. I find that John Cheruiyot Suter is dead. His death was caused by severe and grievous injuries sustained from stabbing by the accused using a knife. He died from the said injuries. He was killed. He was killed by the accused Henry Katap Kipkeu.

I therefore do hereby convict the accused with the offence of murder under Section 203 of the Penal Code. There is only one sentence for this offence as set out in Section 204 of the Penal Code. The accused is hereby sentenced to death.

DATED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF JULY, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Obwatinya for the Accused

Ms. Oundo for the State