



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL APPEAL 43 OF 2005**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**CLEMENT KIPTARUS CHEPKURUI.....ACCUSED**

**JUDGMENT**

The accused person **Clement Kiptarus Chepkurui** was charged with the offence of **murder** contrary to **section 203** as read with **section 204** of the **penal code**. The particulars of the offence stated that, on the 3<sup>rd</sup> day of May 2005 at Torongo Trading Centre in Koibatek District within the Rift Valley Province, he murdered **Gladwell Jebet Mundara**. Fifteen (15) witnesses gave evidence on the side of the prosecution.

The accused person was cohabiting with the deceased at the material time at Torongo Trading Centre. **Saul Kiptita Kipcheba PW1** the father of the deceased testified that the deceased used to cohabite with the accused person at Torongo Trading Centre. However the two used to have domestic problems and the deceased used to complain regularly that the accused person was beating her. She would escape and seek refuge at her father's home for sometimes and then return to the accused person. On 3<sup>rd</sup> May 2005 PW1 was informed by the neighbours that his daughter was shot dead and when he went to the Torongo Trading Centre he found the body of his daughter had been taken away by the police but there were bullet holes on the door of the room his daughter used to occupy with the deceased.

**Jane Chelagat Kibet PW4** the sister of the deceased, also confirmed that the deceased was cohabiting with the accused person at Torongo Trading Centre. Prior to this incidence, the deceased had returned to her home where they stayed for about three weeks. It was during this time, PW4 testified that the deceased told her that she would not go back to live with the accused person because he had threatened her with a gun. On 3<sup>rd</sup> May 2005, the accused person approached the deceased he gave her a mobile phone and some her money to buy milk for the child. He went away and returned later, that is when the deceased went to Torongo Centre where they were living with the deceased. The next day they learnt that the deceased had been shot dead by the accused person.

**Jowin Cheronno Chebet** also saw the deceased and the deceased person engaged in a conversation on the road side on 3<sup>rd</sup> May 2005. The deceased had revealed to PW5 that she was having domestic problems with the accused person. The deceased used to run away frequently from these domestic problems to seek refuge in her father's house. **APC Albert Kurgat PW6** was also based at Torongo Division. He had just resumed work on 3<sup>rd</sup> May 2005 at about 7.00. He was called by the accused person and asked to rush to his house. PW6 obliged, when he reached the accused person's house, he opened the door and found the deceased lying on the bed. She was bleeding profusely and her baby was still strap on her back. He removed the baby who was crying and took him to his house. He telephoned the D.O. of the area.

The scene was also visited by Jacob Kirop who was working at the D.O.'s office Torongo at the time. He saw the body of the deceased that was lying dead. He observed that the deceased was shot through the left ear and the bullet exited through the right ear. The chief of the area, Kiplop Sila Mulalit (PW8), also

visited the scene and made telephone calls to the area DO of the area.

**PW3, George Matundura** was the D.O. of Torongo at the material time. He testified that he had worked with the accused person for two years prior to this incidence. He received a call regarding the accused person who had allegedly gunned down his wife at Torongo Trading Centre. He proceeded to the scene in the company of **Cpl. Jackson Kirui PW10**. They observed that there was a bullet hole on the door of the deceased's house. There was a trail of blood from the door to where the body of the deceased was lying on a bed. This was a rented house occupied by the accused person at Torongo Trading Centre. The body of the deceased was taken to the Provincial District Hospital and a post-mortem report was produced in by Dr. John Mbogo on behalf of Dr. Omutsa who is currently on further studies. Dr. Mbogo said he was familiar with Dr. Omutsa's handwriting. They had worked together as colleagues for about 3 years. According to the report, the cause of death was severe head injury due to the fracture of the skull due to a gun shot mostly at a close range. Dr. Mbogo also produced the P3 form for medical examination of the accused person which found that the accused person was fit to stand the trial.

This matter was investigated by **C.I. Bakari PW15** who was the D.C.I.O. Koibatek on 3<sup>rd</sup> May 2005. When he received the report of the shooting of the deceased by the accused person he rushed to the scene but did not find the accused person. Later on he learnt that the accused person surrendered himself at Timboroa's D.O.'s office and he was arrested by **PC Keter Kiprotich PW9**. PW15 launched investigations as to the cause of shooting. He recovered the occurrence book from Torongo AP camp. The O.B. showed that the accused person booked himself on duty on 3<sup>rd</sup> May 2005 at 6.00 p.m. also recovered and produced as exhibits was the Arms movement register for Torongo Division. It showed that the accused person had been issued with a pistol Taurus 70319 which was used to shoot the deceased. The pistol was taken by PW5 for examination by a Firearm examiner. He produced a report that showed the gun which was produced as exhibit No. 1 He confirmed that the ammunitions were fired from the same gun also were firearms as per the description of a firearm under the **Firearm Act (Cap 114)**. PW15 charged the accused person with the offence of murder.

Put on his defence, the accused person gave a sworn statement of defence. He testified that the deceased was his wife. They met in 1998, and married the same year, they have one child. On the material day, he reported to work at 6.00 p.m. at Torongo Division. He was issued with the Firearm that was produced as exhibit in this court. He was assigned patrol duties within the town at night. He went to his house which was within the centre and found his wife washing utensils. The deceased served him with dinner at about 6.45 p.m. and continued with her work.

The accused person went on eating. He decided to remove the pistol from his pocket and offload the bullet that is when one of them exploded and the deceased was shot through the door. He heard the child crying and found his wife lying down. He lifted her and saw blood gushing out of the head. He placed her on the bed. When he saw the pool of blood, he decided to call a neighbour. He also rushed to the D.O.'s residence and found his wife who informed that the D.O. had gone to work. He followed the D.O. up to Timboroa Police Station and he explained to the D.O. and the police that the gun had exploded by mistake. He maintained that the pistol exploded accidentally and his wife was killed. He denied that he had domestic problems with the deceased. When he realised that the deceased was fatally injured he was in a state of shock. He decided to run and call a colleague whom he told that there was something in his house. That is when he decided to report the matter at the D.O.'s office which was very many kilometres to Timboroa. He walked all the distance arriving the following day.

During cross-examination, the accuse person, admitted that he was trained as police officer with seventeen years experience. Throughout the seventeen years, he was working as an administration police man he was using a gun. The pistol just exploded accidentally and landed on the deceased who was outside. He also confirmed that it was unusual for him to go home with a pistol. That particular night he was on duty and decided to remove the ammunitions because he was in the house.

The defence by the accused person is that he killed the deceased accidentally. The issue for determination is whether the prosecution have proved their case to the required standard that the accused

person murdered the deceased with malice aforethought. Evidence by the deceased's father and sister is that the accused person used to have domestic quarrels and used to beat the deceased who would occasionally seek refuge at her father's home. Indeed on the material day she had just returned to the accused person after she had sought refuge in her parent's home for three weeks. The deceased was seen conversing with the accused person on the road. The accused person gave her his mobile phone and some money to buy milk for their child. That is when the deceased returned to the place where she was cohabiting with the deceased.

The post-mortem report shows that the deceased was shot at close range. The witnesses who visited the scene confirmed that there was a bullet hole on the door. There was also a trail of blood. What this court has to determine is whether, the accused person aimed the gun at the deceased or the pistol exploded accidentally. There is evidence that the deceased and the accused person had matrimonial problems and that is why the deceased had sought refuge at her parent's home. There is also evidence that the accused person approached the deceased and probably they reconciled when he gave her a mobile phone, some money. That is why the deceased returned to the place they were cohabiting with the accused person.

Did the accused person lure the deceased to return with the intention of killing her, or did the gun explode accidentally? Since the first question cannot be answered with clear affirmation, I will take the defence by the accused person that he killed the deceased accidentally. However the accused person is a trained police officer to boot. He has a wealth of experience of seventeen years, all spent while of handling ammunition and firearms. On the material day he must have been negligent in handling the gun and thus the life of an innocent Kenyan was lost. It is for that reason I convict the accused person of the offence of manslaughter.

Judgment read and signed on 23<sup>rd</sup> day of October, 2008

**M. KOOME**

**JUDGE**