



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Case 25 of 2008

REPUBLIC PROSECUTOR

VERSUS

GEOFFREY KIPNGENOACCUSED

JUDGMENT

I: Procedure

1. Geoffrey Kipngeno a male adult aged 18 years old is charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code.

2. The particulars of offence being

That on the 8th day of June, 2008 at Emitiot Village in Bomet District within the Rift Valley Province murdered Leonard Kipkirui Langat.

3. The said accused pleaded not guilty to the offence.

4. The trial before this Court commenced on 17th November, 2008 with the prosecution calling nine (9) prosecution witnesses.

5. The procedure for an inquest, committal bundles and or hearing with assessors or jury have since long been repealed in Kenya. The Murder trial is heard before one judge.

II: Background

6. It is the prosecution case that on the material day of 8th June 2008, the deceased Leonard Kipkirui Langat had joined two prosecution witnesses as they walked near a junction. The accused person, together with one Wesley (PW2) were also met at the junction and the four persons began walking towards one direction. The deceased was the fifth person and was ahead of the prosecution witness but behind the accused and Wesley.

7. A fight broke out between the accused and the deceased. The accused fell the deceased and then ran away.

8. This was near the river. There were other witnesses who came. PW5 Gladys Koech who had been on

her way to fetch water saw PW3 stand by. She went to enquire and found the deceased still alive but injured. She was informed that the deceased had been beaten by the accused. It began to rain and she gave her coat to cover the deceased person.

PW1 who had been called to where the deceased was asked PW6 a lady who had her house nearby to keep the deceased there till they could get help. She agreed to do so. By the time help arrived almost 12 hours later, the deceased had died from the injuries sustained.

9. The Postmortem report produced by the doctor revealed that the deceased male then aged 28 years old, had bruising on the left temporal region, forehead lips and swollen left mandibular region (*that is below the chin*). The injuries sustained had caused haematoma or bleeding on the left intra cranial together with concussion to the left cerebral pargedigma. The doctor concluded that the deceased suffered from cardiopulmonary arrest due to severe head injury that had been caused by a blunt head trauma.

III: Arguments by Prosecution and defence.

10. The advocate for the accused in his submission tried to imply that the injuries were caused as a result of the deceased falling down and hitting himself physically on some sharp stones. There was no factual evidence to prove this given by any of the witnesses and I am incline to reject this line of arguments. The doctor stated that the blunt object was consistent to an assault on the head, lips and under the chin region.

11. The fact established by the prosecution is that the deceased and the accused person fought. The accused beat up the deceased then ran away. Everyone saw him do this. This though was counteracted in evidence by PW2- his friend Wesley. Wesley retracted his statement and implied that the accused never beat up the deceased. He was treated as a hostile witness to his statement which clearly said the accused did indeed punch the deceased in the face.

12. In the case law of **MKENDESHWO V REPUBLIC**

(2002) IKLR 461 OMOLO, SHAH & BOSIRE JJA)

The advocate for the accused implied that the whole case was due to circumstantial evidence as was in the above case law. I believe what he may be properly stating, is that the burden of proof in criminal case should never shift to the accused person. I am in agreement with this principle of law, that the burden of proof remains with the state and not with the accused. Indeed in his second case law **of Republic v Nyambura & 4 others (2001) KLR 355. (Etyang J)** where the prosecution charged the accused without placing evidence to show they were at the scene of crime, the said case outlines clearly that the burden of proof lies wholly on the prosecution.

13. Nonetheless it is the ingredient of proof that is important to note here, namely

- i. That the death of deceased occurred and what caused that death?**
- ii. That it was the accused who committed the unlawful act which caused the deceased's death**
- iii. That the accused had malice aforethought**

14. The prosecution emphasized that the evidence before the court was direct evidence and not circumstantial evidence. Namely, the accused fought with the deceased, beat him up and caused his death 12 hours later. That malice aforethought was established by the prosecution for the said offence and as such the accused ought to be committed for the offence of murder.

15. In his unsworn statement the accused stated when he met the deceased, the deceased began insulting him. That he used to sleep with his wife. They "*struggled*" not "*fought*" and he managed to escape and ran away. He was arrested by the police the following day.

III: Opinion

16. I believe that the prosecution have established the first ingredient of Murder being that the deceased died. That the deceased met his death as a result of an unlawful act. This unlawful act was the assault and or grievous harm inflicted upon the deceased by the blows he received as a result of a fight he had with the accused. The prosecution have established that it is the accused who inflicted the said blow and injury.

17. The question therefore arises, is the issue of malice aforethought. Did the accused have the intention to inflict injury on the deceased to cause his fatal harm?

18. The prosecution witnesses attested to there being a fight between the two. Some of the witnesses did not know what caused the said fight (PW3) (PW4) It was only Wesley (PW2) the witness who was treated as a hostile witness who stated that the issue of the fight was due to the love affair the deceased had (*with the accused's wife?*)

19. The accused claim to have been provoked although this may not necessarily have been his defence according to his advocate's presentation of his case. He then did indeed fight the deceased. The other witness (PW4) intervened by asking why they were fighting. The accused had the opportunity to stop his fight. He instead continued and did not stop.

20. It was only one person who in fact fought the deceased and that was the accused. His intention was malicious as he used excessive force and continued with the fight long before he was informed and asked why he fought.

III: Verdict

21. I hereby find that the accused murdered the deceased. He did so by inflicting injury upon the deceased, that was excessive.

22. It has been held in past authorities that even if the injury inflicted was so done and the deceased dies within 12 months the offender would be guilty of murder.

23. I accordingly find the accused guilty as charged. He is sentence to Death and will be detained at the pleasure of the President.

DATED this 21st day of November, 2008 at **Kericho**

M.A. ANG'AWA

JUDGE

Advocates

F.O. Koko advocate instructed by M/S Koko & Co. advocates

for accused.

R.K. Koech – Senior State Counsel instructed by the

Attorney General for the Republic