



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Criminal Case 12 of 2008

REPUBLIC PROSECUTOR

VERSUS

JOSEAH KIPRONO LANGATACCUSED

JUDGMENT

I: Procedure

1. The Criminal Law in Kenya has changed drastically in the last two decades.
2. This is a Murder case. Previously an inquest would be held to determine the cause of a Murder. If the Subordinate Courts, who would normally hear such inquest, find a case to answer, the matter would be referred to the High Court of Kenya for trial. The jury system was dispensed with and was instead replaced with the hearing of a single judge with the help of two/three assessors. The inquiry system was replaced by committal bundles.
3. The assessors were soon dispensed with. Their tasks was to give an opinion on the Cultural Customary Law of the said accused person to assist the Hon. Judge understand the motives of the accused in committing the crime. The committal bundles system in turn was dispensed with also.
4. The position today is in such a serious matter as a loss of life the offender has only a hearing before one Judge and if convicted, only one chance to appeal, that it becomes difficult to comprehend the rights of the offender before the Courts of law.
5. The accused herein a male African adult, at the age of 36 years old is charged with the offence of Murder **contrary to section 203 and 204** of the penal code.

The particulars of the offence being *On 9th March, 2008 at Kapsoit Centre in Kericho District of the Rift Valley Province murdered Evans Kiplangat.*

6. A plea of not guilty was entered by the accused

I: Background

7. It was the prosecutions case that PW1 Robert Cheruiyot Kerich, Evans Kiplangat (*the deceased*) and Dennis Kipkoech Kemei PW2 went to the shopping centre on the 9th March, 2008 at Kapsoit Centre with

the intention of watching a video show. After watching the same the three at about 6.30p.m met with Langat, the accused person, at the general stores. He asked them if he had been assaulted by one of their brothers. He then removed a knife and then stabbed the deceased. He then chased them away. The person stabbed was the deceased uncle. He was taken to the Siloam Hospital but died before treatment.

8. The accused then ran away after stabbing the deceased.

9. Both PW1 and 2 admitted the deceased was related to them.

10. A male nurse PW3 gave evidence stating that he saw the deceased in a very bad condition. He was unable to assist the deceased due to lack of medical facilities. He confirmed that the deceased had been stabbed.

11. The deceased passed away. The cause of death was identified as loss of blood.

12. Mental and physical reports were accordingly produced of the accused and he was found fit to stand trial. He was arrested when he reported to the police station at Kericho of the incident.

13. In his evidence, the accused stated that he had received his salary late in the evening and proceed to the shops and purchased some provisions. He then left with his small shopping and met with the three young men. The deceased attacked him on his left side of his head with a knife. The PW1 and 2 then joined him. In self defence he pushed them to the ground and they fell. They held his coat but he managed to escape.

14. He went to the police station immediately arriving at 8.00p.m to make a report of assault. He was asked to return the following day. When he did so, he was indeed arrested and charged.

15. At all times he was the one who was attacked and acted in self defence.

II: Opinion

16. The advocate for the accused submitted that the accused was the one who had been wronged. He had been attacked and sustained injuries. Therefore the self defence attack on the deceased and his two colleagues was not intentional.

17. I believe in this case, that the accused was at the trading centre when he was attacked by one of the three prosecutions witnesses and the deceased. The accused was able to defend himself and in the process a knife was used by him to stab the deceased in the thighs.

18. The state has to therefore show to this Court that the accused had the intent and malice aforethought to commit the said murder. Did he premeditate the attack on the deceased to cause fatal injuries?

19. The accused in fact on being injured, went to make a complaint to the police station. He was asked to return the following day which he did. He did not run away but on reporting to the police station he was arrested on grounds that the deceased passed away.

20. The deceased assaulted him first. The knife cut the deceased on his left medial thigh causing a cut to the adductors or left thigh and left saphenous. This appears to be a major vein that bled till the deceased being in a critical condition died.

21. I find herein that the deceased and his colleagues intention was such as to cause harm upon the accused.

22. I find that the intent and or *mens rea* to commit murder was not established.

23. I accordingly acquit the accused of this charge unless otherwise lawfully held. He is set at liberty.

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

M.A. ANG'AWA

JUDGE

Advocates:

A.C. Bett advocate instructed by M/S Bett & Co. advocates for accused

R.K. Koech – Senior State Counsel instructed by the Attorney General for the
Republic.