



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Criminal Case 42 of 2005**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**KIPLANGAT RONO.....ACCUSED**

**JUDGMENT**

The accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence state that on the night of 22<sup>nd</sup> and 23<sup>rd</sup> April 2005 at Marigat Farm Solai in the Nakuru District within Rift Valley Province, he murdered Erick Katasi Yatich. Kiplangat Rono the accused person in this case, and the deceased were both living in the house of one Samuel Kimoi. They were also living in the same house with **Benjamin Chebon, PW5**.

On the night of 22<sup>nd</sup> April 2004, the deceased and the accused person started quarrelling over unga flour that is used for cooking ugali. It was said in evidence the deceased had not bought unga for Ugali. In the course of the quarrel, which degenerated into a fight, the accused person hit the deceased with a rungu. The deceased also cut the accused person with a panga. The two fought until PW5 separated them and administered first aid on the injuries each one of them sustained during the scuffle. It appeared as if there was a truce. According to PW5 both the accused person and deceased seemed to have made up and retired to bed. However in the morning when they woke up, they found the deceased was in a very serious condition. He was lying on the floor with injuries on the head and the back. The accused person was walking around with bloodstained clothes saying that he had killed the deceased who was joking with him for a long time.

The matter was reported to the assistant chief of the area, **Tom Kipkirui Kiprono, PW1**. He testified that he visited the scene and found the deceased lying on a pool of blood. He found the accused person trying to administer first aid on the deceased who was already unconscious. He enquired what had happened and was told the accused and the deceased were fighting over food. He recovered a Somali sword which was blood stained. He managed to get a neighbour's vehicle that transported both the accused and the deceased to the police station. The deceased passed away on arrival to the hospital.

The body of the deceased was identified by **Richard Yatich, PW3** for purposes of post-mortem examination. The post-mortem examination was carried out by **Dr. Kogutu Vitalis Owour, PW6** on the 6<sup>th</sup> May 2005, at the Provincial General Hospital, Nakuru. Upon examination of the deceased's body he formed the opinion that the cause of death was severe head injury due to external haemorrhage due to assault. The accused person was arrested by PC Daniel Leledude on 23<sup>rd</sup> April 2005. He had been taken to the police station by members of public. He was booked in together with the deceased but the deceased was taken to the provincial general hospital where he succumbed to the injuries while undergoing treatment.

At the close of the prosecution's case, the accused person was put on his defence. He testified that on the material day, he and the deceased went on a drinking spree until in the evening when they returned to the place where they were staying together. The deceased had gone ahead and lit a fire; he was preparing to cook a meal of ugali using the accused person's unga. The accused person attempted to snatch the unga but the deceased resisted and started pouring it. A fight ensued, the deceased cut the accused person with

a panga on the head and he fell down. The accused person took a rungu and hit the deceased. The two were separated by PW5, they both retired to sleep. Early in the morning, the accused person realised the deceased sustained serious injuries. The matter was reported before the area chief. He visited the scene and arranged for the accused and deceased to be taken to the police station. They travelled in the same vehicle; deceased was taken to the hospital while the accused person was locked in the cells. After three days, the accused person said he was shocked to learn that the deceased had succumbed to the injuries. That is when he was charged with the present offence on 18<sup>th</sup> May 2005.

Counsel for the accused person submitted that the accused person's fundamental rights as provided for under **Section 72(3)(b) of the Constitution** were infringed upon because the accused person was not arraigned in court within the period of fourteen (14) days as provided for in the law. He was arraigned in court after 25 days after the arrest which in itself was a denial of a fair trial.

On this issue, I wish to point out that the accused person was arrested on 23<sup>rd</sup> April 2005 by PC Daniel Leledude who testified before this court. The accused person was represented by counsel who did not seize the opportunity to find out from the arresting officer why the accused person was detained in the police station longer than provided in the law. This issue was raised during the closing submissions and after the prosecution closed their case, thereby denying them an opportunity to offer an explanation. Going by the facts on record, and also the defence by the accused person, he too was injured during the fight. He was taken to hospital three (3) days later. The deceased died in the cause of the treatment. From these facts I am not satisfied that there was inordinate delay and a deliberate attempt by the police to punish the accused person by detaining him in the police station longer than provided in the law.

The principles to guide the court in this respect were set out in the case of **Paul Mwangi Murunga vs. Republic, Court of Appeal No. 5 of 2006**. The provisions of **section 72 (3) (b) of the constitution** provides as follows:

***“(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.”***

It is clear from the above provisions that anybody arrested for alleged commission of a capital offence should be arraigned in court within a period of 14 days. There are several decisions by both by the High Court and the Court of Appeal, which have underlined the need for the trial court to review pertinent circumstances in every case in the interest of justice in order for the trial court to determine whether the accused person's fundamental rights to a fair trial were infringed upon by a delay in arraigning him in court within the stipulated time. (See also the case of **Albanus Mwasia Mutua V Republic CR. App. No 120 of 2004**). Taking the above into consideration, I am not satisfied that the accused person's fundamental rights to a fair trial were prejudiced by the delay of eleven (11) days. That is why even the defence did not find it necessary to seek an explanation from the arresting officer.

On the totality of the evidence before this court, it is clear that the accused person and the deceased were engaged in a fight over the unga. This was the evidence of **Benjamin Chebon PW5** an eye witness; it is also repeated accused person in his defence. Even PW1 found the accused person trying to administer first aid on the deceased on the morning when he organised for the deceased to be taken to the police station. The post-mortem examination reveals that the deceased person sustained very deep cuts all over the body. It is for this reason I find that the accused person used excessive force and took law into his hands when he inflicted the injuries that caused the death of the deceased. Taking all the circumstances of this case into consideration, I find that the prosecution have proved a lesser cognate offence of manslaughter against the accused person. The accused person is accordingly convicted of the lesser cognate charge of manslaughter.

**Judgment read and signed on 14<sup>th</sup> November, 2008**

**M. KOOME**

**JUDGE**