

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Case 17 of 2006

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK KIPKURUI MULINDI.....SUBJECT

RULING

The subject, Patrick Kipkurui Mulindi was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 16th February 2006 at Sigaon Farm, Njoro in Nakuru District, the subject murdered Chepkemoi Taptai (*hereinafter referred to as the deceased*). The subject pleaded not guilty to the charge. The prosecution called five witnesses in its bid to prove the charge of murder against the subject. At the close of the prosecution's case, this court reserved its ruling on whether the subject had a case to answer.

Before giving reasons for its ruling, this court will set out the facts of this case as narrated by the prosecution witnesses. On the 16th February 2006, PW4 Sophia Cheptanui Tomoi, the mother of the subject sent the subject to fetch some salt and tomatoes from the house of a neighbour called Daisy. According to PW4, it was at 6.00 p.m. The subject ran the errand and returned with the said salt and tomatoes. PW4 instructed the subject to prepare the vegetables as she boiled water to cook ugali. As PW4 was cooking ugali, she heard screams emanating from the house of a neighbour. She left the subject at home and went to investigate the cause of the screams. She found that her neighbour, the deceased, had been killed. She returned to her house. She ate supper with the subject after which she prepared to go to bed. She left the subject as he was doing his homework. The subject is a school going minor.

PW4 recalled that before she went to bed, the door of her house was knocked by three young men. She identified two of them as Julius and David. She opened the door for them. They requested her to accompany them to the scene where the deceased had been killed. When PW4 reached the scene, she found a neighbour called Duncan having been beaten up by people from the area on suspicion that he had been involved in the death of the deceased. As the members of public were beating Duncan, they demanded that he names who his accomplices were when he killed the deceased. It is apparent that because of the beating that was administered on the said Duncan, he '*confessed*' that he had killed the deceased. At first, he mentioned PW4 as his accomplice. He later changed his mind when PW4 was taken to the scene and stated that it was the subject.

The group of youths went to the house of PW4 and dragged the subject from the house and brought him to the scene where the body of the deceased was found. The subject was beaten senseless and literally left for the dead. Due to the beatings that Duncan and the subject were subjected to, Duncan succumbed to his injuries and died. PW3 John Saibala, the husband of the deceased testified that on the material day i.e. the 16th February 2006 he had gone to the local market at Nessuit where he had spent his entire day. He returned home at 7.00 p.m. but did not find the deceased at home. When it became dark, he became concerned. He asked his son called Peter to look around the neighbourhood if he could trace the deceased. PW3 testified that his son returned after a short while and told him that he had found the body of the deceased in their farm. PW3 went to scene and saw that the deceased had sustained a stab wound on her chest. There was a lot of blood which had oozed out of the wound. PW3 screamed and alerted the neighbours. The neighbours came to the scene and after a short while, apprehended Duncan and started beating him up. PW3 testified that Duncan '*confessed*' that he had stabbed the deceased while he was in the company of the subject. A knife which was allegedly used to stab the deceased was handed over to

PW3. Some youths went to the house of PW4 and brought the subject to the scene. The subject was beaten senseless. PW3 recalled that because of the beating that was administered to Duncan, he succumbed to his injuries and died.

PW3 rang the police and informed them of what had transpired. The police told him that they would visit the scene. PW3 waited until the following morning. The police did not visit the scene on that night. In the morning, PW3 made a decision to inform PW2 Joseph Rotich Kones, Area Chief of his location. PW2 again informed the police. The police responded to the information given to them by the police and visited the scene. PW2 testified that when PW3 made the report to him, he handed him a knife which was produced in evidence as *prosecution's exhibit No. 4*. PW3 testified that no one saw the deceased being fatally assaulted. The police took away the bodies of Duncan and the deceased from the scene. They also arrested the subject who they found at the scene. He had been tied and guarded by the members of the public at the scene.

The body of the deceased and that of Duncan were taken to the Nakuru Municipal Mortuary where the post-mortem was performed by Dr. Langat. The post-mortem reports of the deceased and Duncan were produced in evidence by PW1 Dr. John Ombonga on behalf of Dr. Langat. Dr. Langat stated that the deceased had sustained a stab wound on the left parasternal area which penetrated into the chest cavity. On internal examination, there was a left-sided haemothorax. The pericardium was perforated. There was massive blood percolation around the heart. He formed the opinion that the cause of death of the deceased was cardiac tamponade secondary to the stab wound injury. The cause of death of Duncan was found to be massive subdural haematoma on the head and cervical spine injury. The two post-mortems were produced as *prosecution's exhibit No. 1 and 2* respectively.

The subject was examined on the 19th February 2006 and found to be mentally fit to stand trial. The doctor who examined him observed that the subject had sustained blunt injuries all over his body. The P3 form was produced as *prosecution's exhibit No. 3*. PW5 PC Koome Makathimo investigated the case. After concluding his investigation he reached the conclusion that the deceased had been stabbed by Duncan over a dispute of Kshs 20/=. He testified that at the time of the incident, both the deceased and Duncan were drunk. He testified that Duncan was killed by the members of public after the stabbing incident. PW5 further testified that before Duncan was killed, he mentioned that the subject had assisted him to tackle the deceased to the ground before he had stabbed him to death. It is on the basis of what Duncan told the angry mob who had assaulted him that the subject was charged with the offence of murder.

I have carefully evaluated the evidence adduced by the prosecution witnesses in this case. No one saw the deceased being killed. It is evident that the deceased was killed some time after 7.00 p.m. It was dark. The deceased was stabbed on the chest with a sharp object causing her to sustain fatal injuries. She died on the spot. PW3, the husband of the deceased got concerned when the deceased did not reach home as expected. At about 8.00 p.m., he sent his son called Peter to look for the deceased in the neighbourhood. Peter found the deceased lying dead in their farm. The deceased had bled from the injury that she had sustained. Peter informed his father PW3. He went to the scene and saw the body of the deceased. He screamed and alerted the neighbours. Many neighbours went to the scene. Suspicion immediately zeroed in on Duncan, a neighbour of the deceased. He was apprehended by the members of the public and taken to the scene where the body of the deceased was found. He was beaten by the members of the public. They forced him to 'confess' that he had committed the offence. They also forced him to name his accomplices. Initially Duncan mentioned PW4. But when PW4 was taken to the scene, Duncan changed his story and said that it was the subject. The subject was fetched from his home and brought to the scene of crime. He was beaten senseless. He also 'confessed' to have participated in the killing of the deceased. Duncan was thoroughly beaten at the scene to the extent that he sustained injuries which ultimately proved to be fatal. He died at the scene. The subject was seriously injured.

PW5, who investigated the case, testified that his investigations had established that the subject had participated in the killing of the deceased when he tripped the deceased thus enabling Duncan to stab her. Upon evaluation of the totality of the evidence adduced by the said prosecution witnesses, it is clear that there was no basis upon which members of the public latched on Duncan as a suspect. Although it was

stated by PW5 that Duncan had '*confessed*' to having stabbed the deceased over a debt of Kshs 20/=, no witness came forward to support the said conclusion by the investigating officer. It is clear that in the frenzy of the moment when the body of the deceased was discovered, Duncan was accosted by the neighbours of the deceased and forced to give a false confession. It is the view of this court that Duncan '*confessed*' because he wanted to save his life. He even named the subject in a bid to save his life. That was not to be because he was thoroughly beaten until he succumbed to his injuries. The death of Duncan was unnecessary. I think this is one of the cases where the mob subjected a human being to an injustice.

This court cannot therefore accept that the subject willingly '*confessed*' to having participated in the killing of the deceased. There is no evidence to suggest that the subject was near the place where the body of the deceased was found. I believed the testimony of PW4 when she testified that the subject was with her at the material evening when the deceased was stabbed to death. Further no evidence was adduced by the prosecution witnesses to bring forth any connection between the subject, Duncan and the deceased. There is no reason why the subject could have wished to harm the deceased. There is no evidence connecting the subject with the death of the deceased.

The upshot of the above reasons is that the prosecution has failed to establish a prima facie case that would enable this court put the subject on his defence. The subject is consequently acquitted of the charge of murder. He is ordered released from remand custody forthwith and set at liberty unless otherwise lawfully held.

It is so ordered.

DATED at NAKURU this 13th day of March 2007.

L. KIMARU

JUDGE