



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Case 25 of 2003**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSEPH CHEPKITOL RONO.....ACCUSED**

**JUDGMENT**

The accused, Joseph Chepkitol Rono 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 2<sup>nd</sup> October, 2002 at Tangi Tano Kiambugo in Nakuru District, the accused murdered Stanley Kahoro (*hereinafter referred to as the deceased*). When the accused was arraigned before this court, he pleaded not guilty to the charge. The prosecution called ten witnesses to prove its case on the charge of murder against the accused. After the close of the prosecution's case, the accused was put on his defence. He testified that he had fought with the deceased resulting in the deceased sustaining the fatal injury because he was defending himself. Mr. Cheche, learned counsel for the accused made closing submissions urging the court to acquit the accused. On the other hand, Miss. Opati, learned state counsel urged the court to rely on the evidence on record to reach an appropriate verdict.

The facts of the case as narrated by the prosecution witnesses are as follows; the accused and the deceased were neighbours at Kiambugo farm. The accused and the deceased had lived as neighbours for more than fifteen years prior to the fateful day. On the 2<sup>nd</sup> October 2002, at about 6.00 p.m., while PW1 Mary Waithera Kathuku was going to fetch milk from the neighbourhood where the accused and the deceased resided, she saw the deceased walking slowly while clutching his stomach. After a short moment, the deceased fell to the ground still clutching his stomach. PW1 rushed to the place that the deceased had fallen to the ground. The deceased requested her to remove an arrow which was lodged in his stomach. The deceased claimed that he had been hit with the arrow by the accused.

PW1 knew the accused and the deceased. The two were her neighbours. PW1 recalled that at that moment, the deceased was clutching a bow in one hand. PW1 was frightened and immediately screamed alerting PW2 Kungu Kariuki who went to the scene. PW2 saw that the deceased had an arrow stuck in his stomach. PW2 asked the deceased to tell him what had transpired. The deceased told him that he had been shot by an arrow by the accused. PW2 testified that the deceased was holding a bow on his left hand. He recalled that the deceased told him that he had had an argument with the accused over a spade and a padlock. He however testified that the disagreement over the spade and padlock had festered for a long time and was not the immediate cause of the fight. He recalled that the accused and the deceased were friends and used to drink traditional liquor together. He testified that the accused and the deceased quarrelled when they were drunk. PW2 testified that the bow that the deceased was holding belonged to the grandfather of the accused. He however recalled that he did not see the accused at the scene.

PW2 saw that the condition of the deceased was serious. He immediately sent for a motor vehicle to be

fetches so that the deceased could be taken to hospital. PW3 Josephat Muiruri Kungu, a transporter, was summoned from his home to go and assist to have the deceased taken to hospital. PW3 rushed to the scene and found the deceased lying on the ground with an arrow lodged in his stomach. PW3's motor vehicle was a pick-up. The deceased was put at the back of the Pick-up. It was decided that the brother of the deceased who is a resident of Kitangwanya area was to be informed first before the deceased was taken to hospital. The brother of the deceased lived about 8 km from the scene. PW3 found the brother of the deceased, PW4 Peter Njehia Kahoro at home. PW4 advised that a report be first made to the police before the deceased was taken to hospital. A report was duly made to the police at Elementaita Police Post. Thereafter, the deceased was taken to hospital where he was admitted. He succumbed to his injuries later on that night and died.

Meanwhile the area chief of Kiambogo was informed of the incident involving the accused and the deceased. He immediately set about to look for the accused. The accused was arrested by the chief and two administration police officer namely; James Ngaziga and John Lemoko as he was seeking medical treatment at a private clinic at Tangi Tano Trading Centre. The accused was taken to Elementaita Police Post where he was re-arrested by PW8 Sgt Douglas Nyakundi Isaboke. PW8 was at the material time the officer in-charge of Elementaita Police Post. He visited the scene where the incident was alleged to have taken place. He established that the deceased and the accused were indeed neighbours and had prior to the incident been close friends. He testified that he conducted initial investigations and confirmed that no one was present when the accused and the deceased were involved in the scuffle that led to the deceased being shot in the stomach with the arrow. PW8 confirmed that the accused had sustained an injury on his hand. The hand of the accused was at the material time bandaged.

On the 4<sup>th</sup> October 2002, while PW5 PC Joshua Amwayi was on duty at Elementaita Police Post, he received a bow from PW4 the brother of the deceased. The bow was produced as an exhibit during trial. It was marked as *prosecution exhibit No.1*. PW5 confirmed that apart from the bow, he was not given any arrows. PW6 CPL Alex Ngeiywa, then based at Gilgil Police Station was assigned to investigate the case. He testified that he recorded the statements of the witnesses. He also visited the scene and after concluding his investigations, reached the decision to charge the accused with the offence of murder. He confirmed that at the time the incident occurred, the accused and the deceased had been drinking traditional liquor, after which a quarrel ensued leading to the accused to shoot the deceased with an arrow. He testified that his investigations had confirmed that the accused had shot the deceased with the arrow after the deceased had cut the accused with a panga.

On the 7<sup>th</sup> October 2002 at the Provincial General Hospital mortuary, Nakuru Dr.Kogutu performed a post-mortem on the body of the deceased. He observed that there was a surgical scar in the left paramedian. There was a stab wound which had been stitched on the left side of the chest below the 12<sup>th</sup> rib which was about 1.5 cm in length. There was a stab injury to the spleen and the small intestine which caused internal haemorrhage. Dr. Kogutu formed the opinion that the cause of death of the deceased was internal haemorrhage due to injury of the spleen. The post-mortem report was produced on behalf of Dr. Kogutu by PW7 Dr. Philip Wainaina Kamau as *prosecution's exhibit No.2*. The accused was examined on the 9<sup>th</sup> October 2002 and found to be mentally fit to stand trial. The doctor who examined the accused observed that the accused had sustained an injury on his right fore arm which was bandaged and had been plastered. The said arm was held in a sling. The P3 form was produced as *prosecution's exhibit No.3*.

After his arrest, the accused recorded a statement under inquiry before PW9 CIP Doris Akinyi who was at the material time the officer in-charge of Crime at Gilgil Police Station. PW9 recalled that she recorded the said statement under inquiry on the 7<sup>th</sup> October 2002. The accused told PW9 that on the material day the deceased called him. The accused went to where the deceased was. At the time the deceased was armed with a spear and a panga. The accused stated that the deceased attacked him and cut him with a panga. The accused held on the deceased. A struggle ensued. The accused stated that the deceased was accidentally stabbed in the stomach and fatally injured by the arrow. The accused did not object to the production of his statement made under inquiry. The statement was produced as *prosecution's exhibit No.3*. The accused recorded a charge and cautionary statement before PW10 CIP Joseph Kigen on the 7<sup>th</sup> October 2002. He denied that he had killed the deceased. The accused did not

object to the production of the charge and cautionary statement. It was produced as *prosecution's exhibit No.4*. The accused told PW10 that the deceased had provoked him and was at that time armed with a bow and arrows. The accused further told PW10 that the deceased was further armed with a panga and had called him to his house and then attacked him for no apparent reason.

When the accused was put on his defence, he gave a sworn statement whereby he stated that the deceased was his friend and neighbour. He recalled that their houses were next to each other. He testified that he and the deceased used to drink traditional liquor together. On the material day, he recalled that as he was walking to his house, the deceased called him. He responded to the summon and went to where the deceased was standing. The deceased was at the time armed with a panga, bow and arrows and a Maasai rungu. The accused asked the deceased why he was so armed. The deceased laughed before cutting the accused on his shoulder with a panga. He again cut the accused on his little finger. The accused was shocked because he had not quarrelled with the deceased. He testified that when he realised that the deceased was going to harm him, he tried to disarm the deceased by removing the arrows from his possession. Both of them fell down and a struggle ensued. It was in the process of the struggle, that the arrow struck the stomach of the deceased.

The accused testified that he had no intention to kill the deceased. He denied that he had quarrelled with the deceased over a spade or a padlock prior to the said incident. He recalled that when the deceased fell to the ground, he got the opportunity and escaped from the scene. He realised that he had been injured. He went to a private clinic at Tangi Tano where the cut injury was stitched. The accused was advised to seek further medical attention on the following day. The accused testified that he slept at home and on the following day went and made the report to the Chief. He did not find the Chief and therefore decided to seek further medical attention at a health centre at a place called Mastoo. It was while he was at the health centre that he was arrested by the Chief who was accompanied by the administration police officers and taken to Elementaita Police Post. The accused reiterated that the deceased was his friend and he had no intention to cause his death. He reiterated that the deceased was stabbed with the arrow while they were struggling on the ground when he sought to disarm the deceased.

In criminal cases, the onus to establish the guilt of an accused person is on the prosecution. The prosecution is under a duty to establish the guilt of an accused person to the required standard of proof beyond reasonable doubt. The accused is under no obligation to prove his innocence. The duty of an accused person is only restricted to raising reasonable doubt on the prosecution's case against him.

In the present case, it is the prosecution's case that the accused shot the deceased with an arrow on the stomach and thus caused him to sustain fatal injury. It is the prosecution's case that the accused had quarrelled with the deceased over a spade and a padlock leading to the said fatal confrontation. According to PW1 and PW2, when they saw the deceased lying on the ground with an arrow stuck on his stomach, the deceased told them that he had been shot with the arrow by the accused. He told them that he had been shot with the arrow by the accused after they had quarrelled over a spade and a padlock. The deceased was holding a bow on his hand. The bow was produced as *prosecution's exhibit No.1*. He did not have any other weapon in his possession at the time.

PW2, a neighbour of the accused and the deceased testified that the accused and the deceased were friends. In fact, the accused and the deceased were drinking mates. They would occasionally go on a drinking spree where traditional liquor was being sold. It was further the prosecution's case that the accused had shot the deceased with an arrow after the deceased had cut the accused with a panga. The accused does not deny that he had a confrontation with the deceased. His version of events is however different. He testified that as he was walking to his house, he was called by the deceased, and who, without any provocation, cut him on his shoulder and on his arm with the panga. He testified that he realised that if he did not take immediate action, the deceased would seriously injure him. It was then that he confronted the deceased with a view of disarming him of the bow and arrows that were in his possession.

A struggle ensued resulting in the deceased accidentally being stabbed in the stomach by one of the arrows that the deceased had in his possession. The accused has stuck with this explanation of the version

of events from the time he was arrested. In the statement made under inquiry, the accused told PW9 pretty much the same story that he told the court. The accused had the option of having the statement under inquiry excluded from these proceedings due to the fact that confessions were outlawed in 2003. He however insisted that the said statement under inquiry should be produced in evidence. The same was produced as *prosecution's exhibit No.3* by PW9.

The deceased died from the injury inflicted by the arrow. Whether he was shot by the accused with the said arrow or whether the said arrow accidentally struck him as he was struggling with the accused is the issue for determination. If it is established that the accused shot the deceased with the arrow, then there would be an element of the accused intending to cause harm to the deceased. PW2 testified that the bow which the deceased was holding at the time PW1 and PW2 found the deceased writhing on the ground belonged to the grandfather of the accused. Could it be said that the deceased disarmed the accused after he was shot with the arrow? How did the deceased come into possession of the bow that belonged to the grandfather of the accused? How did the accused sustain the injury on his arm? Was he cut with a panga by the deceased as he claims? Which version of events should be believed – the version of the prosecution that it is the accused who shot the deceased with an arrow or the version of the accused that the deceased was struck with the arrow when he was trying to defend himself after he had been attacked by the deceased for no apparent reason? Did a quarrel ensue between the accused and the deceased before the fatal confrontation?

I have carefully evaluated the evidence that was adduced by the prosecution and the evidence that was adduced by the accused in his defence. The accused does not deny that he caused the death of the deceased. He however testified that the deceased was accidentally stabbed on his stomach with the arrow when he was struggling with the deceased in his bid to disarm him. This was after the deceased had cut him with a panga. It was however the prosecution's case that the accused shot the deceased with the arrow after he had quarrelled with the deceased. PW2 testified that the bow that the deceased was holding when he was found writhing on the ground with an arrow stuck in his stomach belonged to the grandfather of the accused. Having evaluated the evidence adduced, it is clear that the deceased disarmed the accused of the bow that was in his possession.

According to the prosecution witnesses, the accused and the deceased were friends. In fact they were drinking mates. When the deceased was asked who had caused him the injury, he told PW1 and PW2 that he had been injured by the accused after they had quarrelled over a spade and a padlock. PW2 however testified that the dispute between the accused and the deceased over the said spade and padlock was long standing and could not have been an immediate cause of the disagreement that finally led to the death of the deceased. Taking into consideration the totality of the evidence adduced in this case, it is clear that the deceased was shot with the arrow after he had attacked the accused with the panga. PW1 saw the deceased walking towards her direction while clutching his stomach. PW1 then saw the deceased fall to the ground. When she went to where the deceased had fallen to the ground, she realised that the deceased had been shot on the stomach with an arrow. She did not see the accused in the vicinity.

It is therefore clear from the above testimony of PW1 that the accused actually shot the deceased with the arrow. The version of the narration of events by the accused is therefore highly improbable. The analysis of the evidence by this court indicate that the deceased attacked the accused and cut him with the panga before the accused armed himself with the bow and arrow and then shot the deceased thus fatally injuring him. PW7 Dr. Philip Wainaina Kamau produced the post-mortem in respect of the deceased which confirmed that the deceased had died due to internal haemorrhage caused by the injury inflicted by the arrow on the spleen and the small intestines. This court's further analysis of the evidence indicate that although the deceased had assaulted the accused and caused him to sustain cut wounds, the accused responded by shooting the deceased with an arrow. It is the view of this court that the accused used excessive force when he reacted to the injuries that were inflicted on him by the deceased.

In the circumstances of this case therefore, I do hold that although the accused shot the deceased with the arrow in self defence, he in the circumstances however used excessive force. By using excessive force, the accused caused the death of the deceased. I do therefore hold that the prosecution proved to the required standard of proof beyond reasonable doubt that the accused unintentionally killed the deceased.

The accused is therefore guilty of the lesser but cognate offence of manslaughter. I therefore convict the accused of the offence of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code.**

The three assessors who assisted this court during the hearing of this case reached different verdicts. One assessor found the accused guilty of manslaughter while the other two entered a verdict of not guilty. For the reasons stated above this court agrees with the one assessor who found the accused guilty of manslaughter. The other two assessors were of the opinion that the accused used reasonable force when he shot the deceased with the arrow. The analysis of the evidence on record by this court however reached the different finding that the accused had used excessive force.

The accused is accordingly convicted of manslaughter. It is so ordered.

**DATED at NAKURU this 14<sup>th</sup> day of June, 2007**

**L. KIMARU**

**JUDGE**