

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Criminal Case 28A of 2006

REPUBLICPROSECUTOR

VERSUS

GILBERT CHEPKWONY *alias* TELE.....SUBJECT

JUDGMENT

The subject, Gilbert Chepkwony *alias* Tele was charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 21st August 2006 at Bomet Township in Bomet District, the subject murdered Geoffrey Kipsang Langat. When the subject was arraigned before this court, he pleaded not guilty to the charge. The prosecution called seven witnesses in its bid to establish the charge against the subject. After the close of the prosecution's case, the subject was put on his defence. He gave an unsworn statement in his defence.

The facts of this case as can be reconstructed from the evidence adduced by the prosecution witnesses are as follows: The deceased and PW2 Janet Chepkurui Tele were lovers. According to PW2, their friendship had existed for about a year and six months prior to the fateful day. The subject is the son of the sister of PW2 called Salina. PW2 used to reside at Kambi Raia Estate in Bomet Township. The subject and his mother lived within the same estate. On the 20th August 2006, at about 11.00 p.m., the deceased went to the house of PW2. According to PW2, the deceased was drunk. The deceased picked a quarrel with PW2. The deceased suspected that PW2 was having affairs with other men. He accused PW2 of being unfaithful to him. PW2 testified that the deceased started assaulting her with fists. She screamed and alerted the neighbours who came to her rescue. Among the neighbours who came to her rescue were one Philip and his wife. PW2 recalled that the subject also came to the scene. She testified that when Philip came to her rescue, she took the opportunity and escaped to the house of her friend called Joyce. She hid in the said house.

After a short while, PW2 was summoned to her house by the screams of the deceased. She found the deceased bleeding profusely from a wound on his leg. PW2 found the subject at the scene. The subject told him that he had fought with the deceased resulting in the deceased being stabbed. PW2 recalled that the utensils in her house were scattered on the floor. She realised that blood had stained her furniture in the house. PW2 immediately requested her neighbours to assist her take the deceased to hospital. Among the neighbours who assisted PW2 were PW1 Judy Chepkorir Koech and PW3 Jonathan Kipkorir Sigei. The two witnesses testified that they arrived at the scene of crime outside the house of PW2 and found the deceased bleeding profusely from a wound on his leg. PW1 recalled that when she reached the scene, the deceased was screaming that he was dying. He did not mention the person who had injured him. She recalled that after a short while, the deceased lost consciousness. PW1 and PW2 recalled that they were able to secure a motor vehicle which took the deceased to Tenwek Mission Hospital. The two testified that upon arrival at the said hospital, the deceased succumbed to his injuries and died. PW1 and PW2 were advised to report the incident to the police.

The police at Bomet Police Station were duly informed. PW7 PC Iftin Tele was assigned to investigate the case. The police went to Tenwek Mission Hospital and transferred the body of the deceased to Longisa Hospital mortuary. PW1, PW2 and PW3 were detained by the police to enable them assist the police with investigations. After recording their statements, the said three witnesses were released. PW1 and PW3 corroborated the testimony of PW2 when she testified that the deceased was her lover and on that material night the deceased had assaulted PW2. They further testified that although they did not see

the subject at the scene, they were informed that the subject had stabbed the deceased when he sought to intervene in the quarrel between PW2 and the deceased.

The body of the deceased was examined on post-mortem by Dr. Joseph Sitonik on the 25th August 2006. On external examination, he observed that there was a penetrating wound in the middle section of the lower thigh which was between 4 – 6 inches long and half an inch wide. The wound had an entry on the inner thigh and exited on the outer side of the thigh. Internal arteries and veins were severed. There were circumferential bruises on the ankles and legs. There was a small stab wound on the left shoulder. He formed the opinion that the cause of death of the deceased was hypovolemic shock due to severe haemorrhage following a penetrating injury to the thigh that severed the blood vessels. The post mortem report was produced on behalf of Dr. Sitonik by PW4, Dr. Meshack Wekesa Liru as *prosecution's exhibit No. 1*. PW4 further produced the P3 form filled by Dr. Sitonik when he examined the subject. He formed the opinion that the subject was 17 years at the time of examination and was mentally fit to stand trial. The said P3 form was produced as *prosecution's exhibit No. 2*. Before the post mortem was performed, the body of the deceased was identified by PW5, Bernard Kiplangat Bett, the father of the deceased and PW6, Richard Kipyegon Arap Bett, the uncle of the deceased.

PW7 testified that when he commenced investigations, he was able to establish that the subject had intervened in a fight between PW2 and the deceased and as a result of which the subject stabbed the deceased causing the deceased to sustain fatal injuries. He testified that after the incident, the subject disappeared from the scene. He recalled that he was able to arrest the subject four days after the incident. This was after he had been tipped that the subject was hiding at a place called Ololunga in Narok district. He testified that he was not able to recover the murder weapon.

When the subject was put on his defence, he denied that he stabbed the deceased. He testified that when he heard the screams emanating from the house of PW2, he went to the scene and arrived there when the deceased had already been stabbed. He testified that he found the deceased lying on the ground having already been stabbed. He denied that he had disappeared from the scene after the incident. He testified that he had gone to visit his relatives in Narok district when he was followed by the police and arrested four days after the incident.

This being a criminal case, it is the duty of the prosecution to establish the guilt of the accused to the required standard of proof beyond reasonable doubt. The burden of proving the guilt of an accused person is on the prosecution. This burden does not shift to the accused. The accused is under no obligation to prove his innocence. His duty is restricted to raising reasonable doubt on the prosecution's case. This court is required to evaluate the evidence adduced by the prosecution witnesses, and the defence offered by the subject, so as to reach its own determination whether the prosecution established the guilt of the subject.

The facts of this case are more or less not in dispute. PW2 and the deceased were lovers. It was apparent that their love relationship had soured due to the fact that the deceased suspected PW2 of having affairs with other men. In fact, the deceased suspected that PW2 was having an affair with one of her neighbours. On the 20th August, 2006 the deceased went to the house of PW2. He reached the house of PW2 at about 11.00 pm. He picked a quarrel with her. According to PW2, the deceased was drunk at the time. The deceased then assaulted PW2 with fists. PW2 screamed and alerted the neighbours who came to her rescue. Among the neighbours who came to her rescue were PW1 and PW3. The subject, who lived nearby with his mother, also responded to the cries for help by PW2. It was apparent that when he arrived at the scene, he was armed with a sharp object. PW7 testified that his investigations revealed that the subject had stabbed the deceased with a Somali sword. The said Somali sword was however not produced in evidence by the prosecution because it was not traced. PW2 testified that when the subject arrived at the scene, a confrontation ensued between him and the deceased. She testified that the subject and the deceased fought. It was during this fight, that the subject apparently stabbed the deceased on his thigh. The deceased fell to the ground writhing with pain.

When PW1 and PW3 arrived at the scene, the subject was nowhere to be seen. PW1 and PW3 took the deceased to hospital. The deceased succumbed to his injuries before he was admitted at Tenwek Mission

Hospital. It was apparent that the deceased had lost a lot of blood after being stabbed. According to the post mortem report, the deceased died due to hypovolemic shock as a result of excessive bleeding caused by the severed veins and arteries on his thigh. The post mortem report was produced as *prosecution's exhibit No. 1* by PW4 on behalf of Dr. Sitonik. The subject was assessed by the same doctor who arrived at the determination that the subject was mentally fit to stand trial. At the time of examination, Dr. Sitonik noted that the subject was 17 years of age. The P3 form was produced as *prosecution exhibit No.2*.

PW7 testified that after the incident, the subject disappeared from the scene. PW1 and PW3 recalled that when they arrived at the scene, they did not see the subject. The subject was arrested four days later at Ololunga in Narok district by PW7 after he was tipped of his whereabouts by a member of the public. It should be noted that the prosecution established that the subject had a motive to injure the deceased. The subject had responded to the screams for help by the sister of his mother. PW2 is the aunt to the subject. The subject therefore attacked the deceased after responding to the cries for help by PW2.

When the subject was put on his defence, he admitted that he was at the scene at the material time but denied that he had stabbed the deceased. He further denied that he had disappeared from the scene after the incident. I have evaluated the evidence adduced by the prosecution witnesses and the defence offered by the subject. It was evident that the prosecution established to required standard of proof beyond reasonable doubt that it was the subject who stabbed the deceased on his thigh and therefore caused the deceased to bleed to death. The prosecution witnesses established that the subject rushed to the house of PW2, his aunt, after PW2 had screamed when she was assaulted by the deceased. The subject admitted that he was at the scene at the material time, but denied that he had stabbed the deceased. Although the weapon that was used to stab the deceased was not found, it was evident from the testimony of the prosecution witnesses particularly PW1, PW2 and PW3 that the subject rushed to the rescue of PW2 when she sought help after being assaulted by the deceased. The act of the subject in disappearing from the scene after the said incident, is a pointer to his guilt. I hold that the prosecution established that it was the subject who stabbed the deceased and fatally injured him.

The issue that remains for determination is whether the subject killed the deceased with malice aforethought. From the evidence adduced, it was clear that the deceased was stabbed by the accused when he was in a foul mood. The deceased was drunk. He had gone to the house of PW2 late at night. He started a fight with PW2. He accused PW2 of having affairs with other men. He beat up PW2. PW2 screamed and was rescued from further beating by the neighbours. Among the people who responded to the cries for help by PW2 was the accused. He fought with the deceased. According to PW2, the subject told her that he fought with the deceased and as a result had stabbed him. It was therefore evident that the subject stabbed the deceased in the course of rescuing her aunt who was being assaulted by the deceased. The subject however used excessive force when he stabbed the deceased with a sharp object. The subject is therefore guilty of the lesser but cognate offence of manslaughter. The subject is accordingly convicted of manslaughter in accordance with **Section 202 as read with Section 205** of the **Penal Code**.

The assessors who assisted this court during the hearing of this case all reached similar verdicts finding the subject guilty of the lesser charge of manslaughter. I have no reasons to disagree with them.

The subject is so convicted.

DATED at KERICHO this 7th November 2007

L. KIMARU

JUDGE