



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU**

**Criminal Case 44 of 2002**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSIA AFUMA ANGULU.....ACCUSED**

**JUDGMENT**

The accused 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 28<sup>th</sup> March 2000 at Baruti Farm in Nakuru District of the Rift Valley Province he murdered Wilson Kipkoros Tanui (hereinafter referred as “*the deceased*”).

The prosecution case was that on the aforesaid date, **PW2, Stephen Kiptanui Kilel**, the father to the deceased, arrived at his home and did not find anybody and when he opened the door to his main house he noticed that there were many household items like utensils and a table that were missing. When his wife, Mary Taputany Kilel (PW5), arrived after a few minutes he asked her where she had been and she informed him that the accused had chased her from the home as he held a bow and arrows in his hands. As PW2 and PW5 were talking, PW5 saw the accused in a nearby bush and she told her husband, PW2. The accused was holding a bow and two arrows. PW2 asked the accused what was the matter with him but the accused simply said that he was going to do something nasty and immediately thereafter the accused ran away. PW2 decided to go and report that threat to Administration Police who were living nearby. At about 3 p.m., while the accused was walking towards his home, he was shot by the deceased on the stomach. PW2 witnessed the shooting incident. He said that he shot him from a distance of about ten metres and the deceased fell down. The deceased was rushed to a hospital and the accused was arrested by administration police from his house which had been set on fire. PW2 was partially cross examined by the defence counsel and was stood down for further cross examination on a later date but he died due to an illness before the cross examination was finalized.

**PW5** corroborated the evidence of PW2 in all material respects.

**PW1, Francis Kibet Arap Kiptel**, testified that on the 28<sup>th</sup> day of March 2000 at about 2 p.m., he was resting in his house when he was woken up by one Sophia Mosonic who told him that there were people who were screaming in the neighbourhood. He rushed out and went to the accused’s homestead where the screams were emanating from and he found the accused having been apprehended by some neighbours. PW1 saw the deceased lying down having been shot with an arrow in his stomach. PW1 and others rushed the deceased to Nakuru Provincial General Hospital. However, PW1 said that he did not know what had transpired before the deceased was shot.

The evidence of PW1 was corroborated by the evidence of **PW3, Michael Koech Mocho** and **PW4, Beatrice Chepkurui Tanui**. PW3 testified that on the material day he heard screams coming from the

deceased's homestead and when he rushed there he found the accused being chased by villagers and he saw the deceased lying down. He was told that the deceased had been shot with an arrow by the accused. PW4 said that she heard her mother-in-law screaming saying that the deceased had been shot with an arrow by the accused and she dashed to the scene. She saw the deceased lying down.

**PW8, Administration Police Constable Samuel Maiyo**, confirmed that on 28<sup>th</sup> March 2000 PW2 went to their camp and reported that the accused had threatened his wife. He further testified that a few hours after they had received the aforesaid report, somebody else went to the camp and reported that the accused had shot the deceased. PW8 and **PW9, Administration Police Constable, Martin Kimani** went to the scene of the shooting and found the accused in his house which was burning. They ordered him to come out which he did and they arrested him. A report was then made to Nakuru Police Station on the 29<sup>th</sup> March 2000.

**PW10, Police Constable Joseph Chirchir** went to the scene and found that the home of the accused had been set on fire by irate villagers. PW10 went to Nakuru Provincial General Hospital mortuary and was given the head of an arrow which had been removed from the deceased's body. He was also given the shaft of an arrow and the two items were produced in court as exhibits.

**PW6, Daniel Kilel** and **PW7, Richard Kipkurui Tanui** identified the body of the deceased to Dr. Bw'otieno at Nakuru Provincial General Hospital mortuary where the post mortem was carried out. The cause of the deceased's death was found to be consistent with a penetrating abdominal injury caused by a sharp object.

When the accused was put on his defence, he chose to give an unsworn statement of defence and stated that on 28<sup>th</sup> March 2000 he rode on his bicycle to Nakuru Town and purchased some stock for his business. Upon return to his home, he saw smoke coming from his house and as he approached the house, he saw some people following him and they started beating him up. The door to his main house had been broken and as he was trying to get in he was hit by some people who were around the house and he fell down unconscious. He woke up in a hospital and was informed that he had been rescued by some police officers who were at the scene. He denied having committed the offence as charged.

Having carefully considered all the evidence that was tendered by the prosecution witnesses and having considered the accused's defence, it is clear that PW2 and PW5 saw the accused shooting the deceased using a bow and arrow. PW5 had been chased out of her home by the accused who was at the time holding a bow and arrows. She reported that incident to her husband, PW2, who in turn reported the incident to PW8 and PW9. However, before the administration police could go and arrest the accused, a report was made to them that the accused had shot the deceased. There were several witnesses who heard screams from the deceased's home and when they went there they found the deceased lying down with an arrow stuck to his stomach. An arrow head was removed from the deceased's stomach after he died.

In light of the above evidence there is no doubt that the accused committed the offence of murder. He shot the deceased with malice aforethought. His defence is untenable and cannot hold any water in view of the clear evidence of the prosecution witnesses who saw him shooting the deceased. His neighbours could not have attacked him for no reason at all and even go to an extent of burning his house. I reject the said defence. I find the accused guilty of murder as charged and convict him accordingly.

DATED at Nakuru this 4<sup>th</sup> day of August 2006.

**D. MUSINGA**

JUDGE

**ACCUSED:** I have nothing to say.

**D. MUSINGA**

JUDGE

SENTENCE: There is only one sentence that is prescribed by the law and I therefore sentence the accused to death. Right of appeal explained.

DATED, SIGNED and DELIVERED at Nakuru this 4<sup>th</sup> day of August, 2006.

**D.MUSINGA**

JUDGE

Judgment delivered in open court in the presence of the accused, Mr. Juma for the accused and Mr. Gumo, Assistant Deputy Public Prosecutor.

**D.MUSINGA**

JUDGE