



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO.3 OF 2005**

REPUBLIC .....PROSECUTOR

-VERSUS-

KAMIRO CHEGE.....ACCUSED

**SUMMING-UP TO THE ASSESSORS**

**I. What Is Expected of Assessors?**

- (1) Trial on a charge of murder, such as this one, is required by law to be conducted by a Judge, with the assistance of **assessors**.
- (2) The task of the assessors is to assist the Judge in deciding on **guilt** or **innocence**.
- (3) Whether the accused is **guilty** or **not guilty** depends firstly on the *evidence* given in Court; and secondly, on the applicable law.

**II. What Is the Case Now Before This Court?**

- (1) The State's case which has been heard in this Court is that:

***“Kamiro Chege, on the night of 7<sup>th</sup> and 8<sup>th</sup> September, 2004 at Kaguku ‘C’ Village, Kaguku Sub-Location, Ithanga Location in Thika District within Central Province, murdered Simon Ngaruiya Michong’o.”***

- (2) Your role as assessors is to take a *lay person's common-sense position*, looking with clear sight, at the *evidence* which has been placed before this Court – and then to tell the Court whether you believe **Kamiro Chege**, the accused, is, or is not the person who caused the death of **Simon Ngaruiya Michong'o** on the night of 7<sup>th</sup> – 8<sup>th</sup> September, 2004.

**III. What Are the Points of Law to Guide the Assessors?**

- (1) The points of law which I am about to state are enough to guide you; and there will be no need for you to seek out any further legal material. The focus of your contribution will rest on the *factual evidence*, which has been placed before the Court, in the form of *witness testimonies*.
- (2) You recall that the charge brought against the accused is **murder**. Please note that causing the death of

a person sometimes amounts to **murder**, but at other times it amounts to **manslaughter**. Now “manslaughter” is a lesser offence than “murder” and the punishment prescribed for it is lighter. But **murder** is a most serious offence, for which there is only one punishment, namely, **death**.

(3) Under the law, a person cannot be held to be guilty of murder unless he has **intentionally** caused death, or he has caused death out of *malice*, or he was so reckless he never cared about the deceased’s right to life, and in that state of mind caused the death of the deceased.

(4) Proof that a person killed another intentionally, and he thus committed **murder**, can be provided by **direct evidence**, i.e., the testimony of one who perceived the killing with one of his or her five senses – such as **hearing, seeing, or feeling**. But, proof of **murder** can also be quite properly done by way of *indirect*, or *circumstantial* evidence; and in such a case, there is no person who saw, heard, or felt the killing of the deceased take place. Such indirect proof is achieved when there are different acts or omissions, that can be proved through testimony, which, when joined together, *clearly point to the hands of the accused in the carrying out of the killing*.

(5) Whether proof of intentional killing of a person is done through **direct** or **circumstantial** evidence, it is the singular task of *the State*, i.e. the **Prosecution**, to discharge it; the accused does not have to prove anything, and may even choose to remain silent; the *State* must prove guilt, leaving no doubts at all in your minds, that nobody other than **the accused**, has caused the death of the deceased. If there remains in your mind even a single doubt, as to who killed the deceased, then you must find the accused **Not Guilty**.

#### **IV. Considering the Testimonies of Witnesses Given in This Court**

(1) You have heard all the nine witnesses testify in Court. Now: do you believe these witnesses to have said the truth? Did any of them give untrue accounts?

(2) Which ones of the **witnesses** are the most crucial, in terms of getting to know who killed **Simon Ngaruiya Michong’o**? What did such important witnesses say, and does their evidence leave *no doubts* at all in your minds, that **Chege Kamiro** is the one who killed the deceased? If **yes**, then you must return a finding of **Guilty**; but if **no**, then you must return a finding of **Not Guilty**.

(3) Consider the following details in the testimonies of the several witnesses ?

- i. PW1, **Paulina Njoki Ngaruiya** testified that the accused went to her home at 12.00 noon on 7<sup>th</sup> September, 2004 seeking her husband who was that night found to have been killed;
- ii. PW5, **Ngugi Kanyari** testified that on the day the deceased died, the deceased and the accused had passed by his home at about 5.30 p.m. while he was feeding his pigs; they were walking in the direction of Kaguku;
- iii. PW6, **Pastor Onesmus Kamau** testified that he had not known the accused until he came to Court and saw him in the dock, but that, at about 8.00 p.m. on 7<sup>th</sup> September, 2004 at Kaguku, he had met the deceased who was very drunk, in the company of the person who has been brought before the Court as the accused;
- iv. PW7, **Peter Nyoike Njuguna** testified that on 7<sup>th</sup> September, 2004 on the road leading to Kaguku, he had met the deceased twice, first at 3.00 p.m – 4.00 p.m. and then again at 5.30 p.m., on each occasion in the company of the man who has been brought to Court as the accused; when PW7 saw the two at 5.30 p.m. the deceased appeared drunk and was unable to move; then on the following day, 8<sup>th</sup> September, 2004, PW7 learned that the deceased had been found dead on the road-side, in the neighbourhood of Kaguku.

(4) It is *for certain*, that none of the nine witnesses personally witnessed the killing of the deceased. And so, the assessors must give their verdict on the basis of **circumstantial evidence**.

(5) To the assessors I will put **one question**: Do the **circumstances** brought out in the testimonies of the nine witnesses, point **clearly and unambiguously to the accused** as the one who killed the deceased, on the night of 7<sup>th</sup> – 8<sup>th</sup> September, 2004?

**V. How Are the Assessors to Express Their Verdict?**

(1) It is required that each assessor shall render his or her *separate verdict* orally in Court. If, however, the three assessors all find themselves in agreement, then their verdict may be presented in Court by one of their number; but in that case, each of the other assessors must personally express his or her agreement with the common finding.

(2) I now adjourn, to allow the assessors to sit together as they consider their verdict, which they will then deliver in Court at the appointed time.

**DATED** and **DELIVERED** at Nairobi this 9<sup>th</sup> day of November, 2006.

**J. B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Ndung'u**

**For the Prosecution: Ms. Mwanza holding brief for Mr. Bifwoli**

**For the Defence: Mrs. Rashid**