



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

**Criminal Case 91 of 2005**

**REPUBLIC..... APPELLANT**

**VERSUS**

**KENNETH KIPLAGAT CHEBOI .....RESPONDENT**

**JUDGEMENT**

I have considered the plea of guilty in respect of the Charge of manslaughter. I have also considered the facts relating to the charge, and the mitigation on his behalf.

On the material night the Accused was at his home. He then heard a commotion outside his house. He went outside to investigate and he saw someone in his compound. The intruder then charged at him with a panga. As a result a scuffle ensued. The intruder was the deceased. The deceased was cut by the panga during the scuffle. The neighbours came responding to the alarm and they took the deceased to Kobulwa centre to look for transport to take him to hospital.

This court notes that the people taking the deceased arrived at Kobulwa t 3 a.m. The court was not told of the distance from the accused house to Kobulwo and whether there are any communication or transport problems. What is clear is that it took almost 8 hours or thereabouts for the deceased to get vehicles transport to take him to hospital. It must also have taken more time to reach Iten Hospital. At Iten Hospital the deceased was pronounced death.

From the cause of death, severe hemorrhage causing multiple organ failure it. I am led to believe that had the deceased received immediate medical treatment or care, he perhaps may not have died. He died from excessive bleeding. This must have been due to the fact that it took over 8 hours from the time of injury for the deceased to be taken or to arrive at Hospital. It was too late as he was pronounced death before any treatment could be given.

This court has also taken into account that the deceased was a trespasser at the accused compound and he attacked the accused with an offensive weapon. the deceased was unknown to the Accused. the accused was naturally entitled to respond in his own defence from an unknown stranger. The time was 7 P.M and it was dark in the compound.

The deceased was cut by his own weapon which he was carrying.

In the premises, I do hereby find that the injury sustained by the deceased was due to the scuffle that took place. The scuffle arose due to his own acts and conduct and he created the dangerous circumstances. The accused was entitled to defend himself and he was not the author of the situation.

From the facts given by the prosecution which have been accepted, I do hereby find that the Accused should not have been charged with any offence at all. There is sufficient cause for this court to convict the Accused even if he had pleaded guilty. It is the accused who could have been charged for various offences had he been alive today.

There is no evidence that the deceased died from any injuries from the stones thrown at him by the Accused. There is no allegation or evidence of use excessive force in his own defence.

I do not accept to convict him on his own plea of guilty. The Accused is innocent. As a result I do hereby acquit the Accused of the offence of manslaughter and do hereby order that he be released forthwith unless he is otherwise lawfully held.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 2<sup>ND</sup> DAY OF NOVEMBER,2006**

**M.K. IBRAHIM**

**JUDGE**