



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL CASE 43 OF 2001**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

- 1. JOHANA CHEPKONGA ..... 1ST ACCUSED**  
**2. KENNEDY KEMBOI ..... 2ND ACCUSED**  
**3. JACKSON KOSGEI KIMUGE ..... 3RD ACCUSED**  
**4. RAPHAEL KANGOGO KIPKORIR ..... 4TH ACCUSED**

**RULING**

After taking evidence from the prosecution witnesses, I am at this stage expected to rule on whether each of the four accused persons in this matter has a case to answer. My decision will be based on whether the prosecution has established a prima facie case against each one of them.

It is for the above reasons that I have had to evaluate the evidence on record. The prosecution case is that these four jointly caused the death of WILLIAM YATOR CHEMWENO. The particulars of the offence being that “On the 28/12/1998 at Kapchelal Village in Keiyo District within the Rift Valley Province, the four, jointly with others not before court murdered the said WILLIAM YATOR CHEMWENO.”

According to the medical doctor who performed the postmortem on the body of Chemweno on 30/12/1998 (PW10), the cause of death was “cardiac arrest due to arrow poison/wounds”.

In order to support this contention, the prosecution called ten witnesses eight of who witnesses, who narrated how they had witnessed the attack by these four accused persons, which led to the death of the said Chemweno at the spot.

Though similar in some aspects, their evidence was contradictory especially on issues pertaining to the nature of arrows, which were used in the attack. It is on record that PW1 to 5 allegedly witnessed the attack by these four, but it was not clear at what particular spots of the scene the arrows were actually found, at and even then how many arrows they were. Were they three or four arrows?

Nevertheless, PW 8 who saw the body claims that the wound was inflicted on the right chest and that only one of the three arrows which were recovered from the scene had a metal tip, yet according to PW1, all three arrows had metal tips.

The evidence regarding position of the arrows differed from witness to witness for according to the police officer who visited the scene (PW9), one arrow was lodged in the chest of the deceased, yet according to

PWs 1 to 8, all the three arrows were lying on the ground. Again the evidence on the position of the arrow vis a vis the body was very different for while according to some witnesses, the arrows were scattered at the scene, while the other witnesses testified that the arrows were lying alongside the body of the deceased. It would be interesting to know how three or was it four arrows, which were aimed at different locations could all lie next to the body of the accused, who as the court was informed, fell two meters away from the position where he had been working when he was hit. It is important to note that of the three, the first one had already hit the jembe which the deceased was using at the material time.

It did not escape my notice that the police picked up the exhibits very quickly upon arrival, and it became quite clear that the police interfered with the exhibits, especially in view of PW10's evidence that there was no weapon on or in the body, all of which to my mind raises serious doubts in the evidence for the prosecution.

As stated earlier, the death was caused by cardiac arrest due to arrow wounds. It is on record that PW10's report indicated that the arrows were poisoned, and that the track of the arrow was clearly marked in the body. It was also his evidence that the police handed over to him the specific arrow heads yet, he could not explain how they had been removed from the body as there was no evidence that it had exited or even been extracted. There was no evidence either to show that the arrow heads which it is claimed were poisoned are the same that were used in the attack. A blood test to prove that point would have eliminated some of the serious doubts that arise in this case.

Of interest is the fact that PW6 who claims to have witnessed the attack from a distance of 500 meters to 600 meters reported the matter to the Police Station, PW9, who received the report, could not even tell the names of the people who had reported the matter to the Police. Needless to say, there was no evidence that the incident was ever investigated.

The police collected the exhibits in a hurry and relied on information from a particular group of people, PW9 clearly indicated that the investigations were conducted by another police officer.

Having evaluated the evidence on record, I form the opinion that it falls short of the required standard as not only was it full of contradictions but it was well orchestrated to incriminate these four, for the prosecution was not able to explain the fact that there were two different statements from PW2, 4 and 5. The matter was compounded further by the fact that though the court ordered that the officer who recorded the statements be summoned to give evidence on that particular aspect, he wasn't called, nor were the arresting and investigating officers called, which omission can only lead to one conclusion, that had they given evidence, it would have been prejudicial to the prosecution case.

It is very doubtful that investigations were ever carried out. It cannot be gainsaid the evidence for the prosecution must be consistent; it must be free from contradictions and must be clear, leaving no unanswered question. It must also show that each accused person has a case to answer to the charge of murder.

Based on the above position in law, and the above finding, it is my humble opinion that the prosecution has not convinced me that they have a prima facie case to warrant placing any of these four accused on his defence and it is for that reason that I find that none of the four has a case to answer, and in accordance with Section 306(1) of the Criminal Procedure Code, I find that Johana Chepkonga, Kennedy Kemboi, Jackson Kosgei Kimuge and Raphael Kangogo Kipkorir are not guilty of the charge of the murder of the said William Yator Chemweno.

I do in the circumstances acquit each one of them accordingly.

Dated and delivered at Eldoret this 13th day of October 2005.

**JEANNE GACHECHE**

**Judge**

**In the presence of:**

**Mr. Birir for 3rd accused and holding brief for Mr. Birech for 1st, 2nd & 4th accused.**

**Mr. Omutelema for the State**