



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 61 OF 2014

REPUBLIC.....PROSECUTOR

=VERSUS=

DENNIS KIPROTICH CHEPKWONY.....ACCUSED

R U L I N G

1. **Dennis Kiprotich Chepkwony** was charged with the offence of **Murder Contrary to Section 203 as read with Section 204 of the Penal Code.**

2. It was alleged that on 7th May, 2014 at Timbwalo Village Tinot Sub-Location in Kuresoi South District within Nakuru County he murdered **David Kipyegon Chirchir.**

3. Plea was taken on the 2nd February, 2017. Accused pleaded not guilty to the charge. The matter was partly heard by *Odero LJ*, who heard three (3) witnesses. I heard PW4 and the prosecution closed its case.

4. The issue was for determination whether this court can, under provisions of **Section 306 (2) of the Criminal Procedure Code**, call upon the accused person to make his defence. **Section 306(2)** requires the court to consider the evidence. It states;

*“When the evidence of the witnesses for the prosecution has been concluded, **the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.**”*

5. Briefly the evidence is as follows;

6. **PW1 Joseph Chirchir** told the court that the deceased was his brother and the deceased and the accused were neighbours. That on 7th May, 2014 he was called by the village elder one Richard Towett who told him that his brother had been beaten and killed. He rushed to the scene. He found his brother lying dead, with cut wounds on neck and head. He noted that the neck was nearly severed. He also noted that his brother had a knife on his body which was still in its sheath. The police came. They entered accused's house. He was not in but they recovered a long knife. He said the knife had blood on it. On cross-examination, he told the court that it was Towett who told him that the accused had run to the police station and reported that he had beaten someone. He said he only knew the accused by one name Dennis. He said the police searched the accused house for about ten (10) minutes then recovered accused's knife. It was not in its sheath. He said he did not know the accused's knife.

7. **PW2 Daniel Wainaina** produced the pathologists report on behalf of Dr. Sammy Getutu. He testified that the body had deep cuts on the head, neck, and shoulder, cut wounds on right fingers. Internally the trachea had a deep cut between 2nd and 5th rib, cut on the right common carotid artery, right internal jugular vein cut on the left internal jugular. On head, fracture of skull from parietal area, right extending internally right zygomatic to the anterior aspect of the auricular area. Nervous system, cut on the right hemisphere, deep with hemorrhage. Cause of death: Severe hemorrhage leading to shock by a sharp object. On cross-examination, he said the history was that the deceased was killed by a neighbour following misunderstanding.

8. **PW3 Caddy Chirchir** was a neighbour to both the accused and the wife of the deceased. She testified that on 7th May 2014 at 6.00 pm, she was home with her husband. He then went out and never returned home the whole night. At some point, she went out to look for him, while behind her house the accused called her from his compound telling her that he had finished the work, who would she boast to now?

The record shows that she said;

“Then I saw the deceased lying on the ground. The accused was cutting him on the neck. By then it was 6.00 p.m. I saw the accused cutting the deceased on the neck. At that time, I was pregnant. I screamed and neighbours took me the neighbour took me to sleep in their house.”

9. The next day she recorded her statement. She said she saw the accused person cut her husband. It was 6.00 p.m. Shown the exhibit in court she said it was not the knife she had seen the accused with. What she had seen was longer, a simi. She testified that she was not aware of any problem between her husband and the accused. That the only problem was between herself and the accused person. That the accused had threatened to burn down her house and beat her. That she had reported to the chief. That after accused killed her husband he took himself to Keringet Police Station. On cross-examination, she told the court that her grudge with the accused was from March 2014. She said the accused worked with a power saw. That he had worked for the deceased severally. She was not aware that the deceased owed accused money. She said on the material date the deceased was drunk. She gave him supper at 6.00 p.m., but he went outside and she followed him to call him to come and eat his food. She went behind the house and that is when accused called her ***“Ceddy, I have finished the job.”*** She screamed. She saw accused’s wife come out of the house but did not recall what happened.

10. She denied that she was saying she saw accused cutting her husband because of the grudge. She said when he told her ***“Nimemaliza kazi”*** he was busy cutting her husband. She saw him lift the simi and cut him. She said that it was not usual for her husband to go to the accused’s compound.

11. On re-examination, she said she did not know what her husband had gone to do in the accused’s house. She did not know the owner of the knife she saw. She said her husband also had a simi like the one she had seen in court. That the knife she saw with accused was longer.

12. **PW4 No. 67533 Cpl Francisco Oduor Ochido** testified that on 7th May 2014, about 6.00 p.m. he was at the Kiptagich Police Post in the company of PC Geoffrey Jefwa when the accused appeared from a path opposite the station. He was accompanied by six (6) dogs. Cpl Oduor recalled that the same person he saw had been at the station a week earlier complaining about a certain lady for whom he had performed some lumbering job, and she had not paid him for the job. He had also reported that he had reported at Kiptagich Police Station, and had told him that the police station would investigate.

13. Now his report was that the same lady had come to quarrel him. As they were talking Cpl Oduor received a call from a village elder asking whether there was a person accompanied by dogs at the police post. The village elder told Cpl Oduor that that person had murdered a person at Timbwalo Village and ought to be arrested and placed in cells. When he asked the accused whether that was true, the response he got was that the person had gone to quarrel him. They immediately locked him up and informed the OCS Olenguruone Police Station.

14. About 7.00 p.m., they proceeded to the scene and found the body of David Chirchir. He was lying in the pool of blood in the cattle enclosure. He had deep cuts in the neck, side of face, shoulder. His knife was still in its sheath. They found the murder weapon in the bedroom of the accused’s house. It had blood on it. He handed over to the OCS CI Otieno. After making inquiries and taking the contacts of witnesses, they took the body to Molo Sub Divisional Hospital and accused to Olenguruone Police Station. On 10th day of May 2014, he attended the post mortem together with brother of deceased. According to his investigations deceased was a truck driver who was mostly away from home. There had been quarrels between his wife Zedi Cherono and the accused. That when he came home the wife told him about it. He went drinking and while there vowed to visit the accused. That he went home armed himself and went to accused’s homestead. A quarrel ensued, an affray followed, the accused disarmed the deceased and administered the injuries found on the deceased. He then surrendered.

15. He produced the sword as **P. Exhibit 2** a maroon sheath as **P. Exhibit 2(a)**. On cross-examination by Mr. Orege for the accused person, he told the court that the accused had reported the case of the debt at Keringet Police Station. That on the material date the deceased went drinking and while there vowed to go and visit the accused. That he went to the accused’s home. That when they (police) visited the scene they left the accused at the police station. That they found the accused’s wife at home and that she was present when they recovered the sword in his house. He said he did not do an inventory of the recovery, that he just collected the weapon and handed it over to the OCS.

16. On the 2nd February, 2021 the prosecution closed its case.

17. Is there sufficient evidence to warrant the accused being put on his defence? The prosecution must establish a prima facie case, and for this offence;

- That a person died.
- That the death was unlawful.
- That there is some evidence connecting the accused with the death.

18. There is no doubt that a person died and the post mortem shows that the death was not by natural cause. The body had injuries, which appear to have been caused by someone else.

19. There is a witness who claims to have seen the accused person cutting the deceased, and another one who says that his investigations show that the deceased was found dead in the homestead of the accused, and that the murder weapon was found in the accused’s house. There is also some evidence of a quarrel between the accused and the deceased or the wife of the deceased because of money owed to the accused.

20. From the foregoing it appears that there is reasonable ground upon which to place the accused person on his defence.

21. The accused person will therefore be placed on his defence as per section 306(2) of the CPC

Dated and Delivered virtually this 5th Day of March 2021.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant Edna

For state: Ms. Murunga

For accused: Ms. Mungai holding brief for Mr. Orege for accused

Accused Present

Ms. Mungai: We can take date for Defence Hearing

Court: Defence Hearing on 28th April 2021