



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 16 OF 2020 (MURDER)

REPUBLIC.....PROSECUTION

VERSUS

BENJAMIN KIPLANGAT CHERUIYOT.....ACCUSED

JUDGMENT

1. **Benjamin Kiplangat Cheruiyot** hereinafter referred to the accused person faces a charge of murder contrary to section 203 as read with section 204 of the Penal code. The particulars of the offence in an information dated the 27th May 2020 are that, on the night of 25th May 2019 at Enoosaen location in Transmara West Sub- County within Narok County murdered Philip Siele.

2. The accused pleaded not guilty and the prosecution called seven (7) witnesses in support of their case.

3. Pw1 **Caroline Chelangat Towett** testified that on the 25/5/2019 she was at work at Corner Bar with Enoosean. The accused person entered the bar at 5pm. The accused was joined by a lady called Daisy they ordered drinks and they drunk together until after 5.30pm. At 6pm the deceased entered the bar and sat at his table. At one-time Daisy left the accused and joined the deceased. By then the deceased had ordered his drink, he ordered a drink for Daisy. The accused woke up from his seat and approached the deceased and Daisy. On reaching the deceased the accused held the deceased shirt at the neck. She called the watchman who separated the 2 men. The accused was taken outside. He left saying "*maybe I am not a man*". The deceased and Daisy continued to drink for another 30 minutes and then Daisy left. Siele asked her for the sugar he had left with her at about 9pm. The deceased left at 9.30pm. She worked till 11pm. The next day her sister called Janet informed her that the deceased had been murdered. She recalled seeing the accused carrying a knife around his shoulder area. The accused and the deceased were persons she knew well. During cross examination she stated she does not know who murdered the deceased.

4. Pw2 **Johana Letii** recalled that on the 25/5/2019 at about 7.30pm he was going to work. When he reached Tebwa Bar he heard people struggling in the bar. They were fighting. He asked them to separate. He separated them and asked them not to fight. He proceeded to his place of work. At about 2.00am the same night he was informed that the deceased had been killed. The accused was not a person he knew. He noted that the 2 men were drunk.

5. Pw3 **Samuel Kararam** testified that on the 25/5/2019 he was at Enoosean. Whilst escorting a friend they found someone lying on the road. They stopped and checked the person and saw that he had been cut on the right side of the head, he was bleeding and he was dead. He called the chief and reported the matter. He did not know the deceased.

6. Pw4 **David Kisesa** testified that he knows the deceased. The deceased used to stay at his place. That on the 25/5/2019 he was called by a neighbour at 10.00pm and informed that there was a dead person on the road. Ongoing to the place he found that the person was the deceased in the middle of the road. The deceased had injuries on the head along the neck area. He does not know the accused person. He does not know who killed the deceased person.

7. Pw5 No. **48671 Senior Sergeant Haran Marandi** testified that on the night of 25/5/2019 at about 9 to 10pm they received a call from Enoosaen. They went to the scene and they found the deceased lying along the road in a pool of blood. He had been murdered. He had a deep wound on the neck around the left ear. He appeared to have been cut from behind and then he fell down. They arranged to take the body to mortuary. He continued with the investigation and found out that the deceased was at Tembo drinking. He was informed by Caroline a bar attendant that the accused and the accused had been at the bar. That the accused was employed at the area sub chief's homestead. They visited the same homestead and searched the accused's house but they did not find anything.

8. Pw6 Doctor Peter Momanyi Morebu testified that on the 27/5/2019 at 3.00pm he conducted a post-mortem at Joseph Missions hospital at Kilgoris on the body of Philip Siele. He was a male of African and was about 50 years old. On external examination he noted a deep linear cut wound on the left neck with exposed cervical bones that were fractured. The conjunctival of the eyes was pale, the ears and palms of the hand and sole of the feet was pale. On internal examination he noted that the blood vessels on the cardio-vascular system on the left were cut

off and the spleen and liver were pale. He concluded that the deceased died due to severe haemorrhage secondary to deep cut wound on the left neck. He produced the post mortem report as exhibit no. 1

9. Pw7 No. 98546 P.C David Muoki testified that on the 26/5/2019 he was informed of a murder case around Enoosaen location. With his fellow officers they visited the scene of murder, the bar where the accused and the deceased had been. He was informed of the confrontation the accused and deceased had at the bar. He recorded statements of the crucial witnesses. Later on the 27/5/2019 he attended the post mortem at St. Joseph's Missions hospital. On the 20/5/2020 a year later he arrested the accused person at Emoradigi Police Station after trying to arrest him. That accused was not at his home.

10. After evaluation of the prosecution evidence I put the accused on his defence. The accused elected to give an Unsworn statement. He did not call any witnesses. This is his evidence. He was a farmer before his arrest. On the 25/5/2019 he met the deceased Philip Siele at a place they were taking liquor. A lady joined him and asked him to buy her a drink. He did so. There was a person sitting at the corner. The person came where they were seated and he wanted to fight him over the girl. A watchman there came in and asked him to leave as they wanted to fight. He left alone and left the deceased inside the bar. He left and went to the Chief's house. The Chief was his employer. He was looking after the chief's cows. He was not familiar with the place as he had not stayed for long in the area. He did not meet with the deceased again. He slept at the chief's place and the next day he went to look after the cows. He left the chief's place after he was paid. He went to Emuruwa Dikiri after he was paid. He left the chief's place because the salary was little. He told the chief and other persons that he was leaving. The chief did not know his place but had his phone number. He was in their home all along. He was surprised when they arrested him. He did not know that the deceased had died. When he was arrested he was informed that there was a matter involving him at Kilgoris. That is when he learnt that the deceased had died. He did not see the deceased that night. He had no reason to kill the deceased.

ANALYSIS AND DETERMINATION

11. The offence of murder is defined under **Section 203** of the **Penal Code** thus; *"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."* From this definition, the prosecution is expected to prove the following facts beyond reasonable doubt:

- a. The death of the deceased and cause of that death;
- b. That the accused committed an unlawful act or omission that led to the death; and
- c. That the accused committed the unlawful act with malice aforethought.

12. The fact of the deceased's death is undisputed. Pw1, Pw2, PW3, Pw4, Pw5, and Pw7 all testified the deceased died on the on the 25th May 2019. The post mortem report produced by Pw6 indicated that the cause of death was hemorrhage secondary to a deep cut wound on the left neck. Having established the fact of the deceased's death, and the cause of death the next issue is whether the accused person committed an unlawful act or omission that led to the death of the deceased.

13. The prosecution evidence is that the deceased and the accused were in a Bar on the material night. A lady the accused was drinking with left the accused and joined the deceased. The deceased bought her drink. That as the 2 drunk their liquor the accused approached them and threatened the deceased and they were separated by Pw2. The accused left the bar and the deceased later. Later the deceased was found murdered.

14. It was the evidence Pw1, Pw2, Pw3 and Pw4 that they did not witness the accused kill the deceased. The information the police got as they did their investigations showed that the deceased and the accused had a confrontation and that the 2 were separated and the accused left and later that night the deceased was found dead.

15. There was no direct evidence adduced by the prosecution to prove that the accused killed the deceased. It is evident that he was arrested because of the confrontation he had with the deceased and also because he was not found at the place he was working that same day or the next day. The accused in his defense explained that he was at the Bar with the deceased and that he left the deceased inside the bar. The accused is not required to prove his innocence. The prosecution has a duty to prove their case beyond reasonable doubt. The accused was the prime suspect in the murder. The evidence adduced does not link him to the offence he is charged with, that he murdered the deceased. The accused remains a prime suspect, I give the accused **Benjamin Kiplangat Cheruiyot** the benefit of doubt. The accused is acquitted under section 215 of the Criminal Procedure Code. He is at liberty to go, unless lawfully held.

DATED, SIGNED AND DELIVERED AT KISII THIS 15TH DAY OF JUNE 2021.

R. E. OUGO

JUDGE

In the presence of:

Accused - Benjamin Kiplangat Cheruiyot Present

Mr. Kimaiyo

Counsel For the Accused

Miss Kibungi

State Counsel ODPPP

