



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.38 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

RICHARD KIPYEGON LANGAT.....ACCUSED

JUDGEMENT

1. The Accused person in this case, RICHARD KIPYEGON LANGAT alias Kichokio is facing a charge of murder contrary to section 203 as read with section 204 of the penal code.
2. The particulars of the charge are that 24/11/2018 at about 1.00am at Tabam village in Ainamoi sub-county within Kericho County, the Accused person murdered BERNARD KIPKOECH TONUJ.
3. The Accused person pleaded not guilty to the charge. The prosecution called a total of six witnesses whose evidence in summary was as follows;
4. PW1, DANIEL NGENO testified that on 24/11/2018, he was at a ceremony with the deceased when the Accused person suddenly emerged and cut the deceased with a machete and ran away.
5. PW1 said he screamed and people came. PW1 said they took the deceased to Kericho Hospital where he died after a few days. PW1 said he saw the Accused person cut the deceased with the machete on the legs, arm and the head. He knew the Accused person as KICHOKIO. He did not know why the Accused person attacked the deceased.
6. PW2, BEATRICE MARITIM said she heard the deceased screaming and she ran to the scene and found he had been cut on the right arm, right leg and on the head.
7. PW2 said the deceased told her KICHOKIO had cut him. She saw Kichokio running away from the scene and she screamed. He was carrying a machete. She said she could identify him since she knew him as a neighbour. She said the deceased was her son. She did not know why KICHOKIO attacked him.
8. PW3 ELKANA KIMUTAI TANUI who was a brother to the deceased said on 24/11/2018 at night while at his home at Tabain, he heard screams and ran to the scene where he saw the deceased had been cut on the head, right arm and leg.
9. PW3 said the deceased told him that KICHOKIO had cut him. He ran after KICHOKIO and saw him with a machete. KICHOKIO told PW3 he would cut him as he had cut the deceased and PW3 upon hearing that turned back.
10. PW3 said KICHOKIO had a relationship with their mother and the deceased did not like it. He said the Accused person had threatened to kill the deceased because the deceased was opposed to the relationship with their mother.
11. PW4 VIOLA CHEPNGETICH said on 24/11/2018 she was at her grandmother's house when she heard the deceased screaming that he had been cut. She ran to the scene and saw the deceased had been cut on the head, right leg and right arm.
12. PW4 said they took the deceased to Kericho Hospital and went back home at 5a.m. PW4 said the deceased was her follower. She said the Accused person had a love affair with their mother and she had left the house to them and she moved to her grandmother's house.
13. PW4 said their father was still alive and he was living at Ravine where he worked. She said the Accused person used to threaten to kill the deceased because the deceased was opposed to the love affair with their mother. She said the Accused person always walked with a gadget which was a slasher or a machete.

14. I took over this case at this stage and after complying with section 200 of the CPC I took the evidence of two prosecution witnesses, the investigating officer and the Doctor. The investigating officer who testified as PW5 said he wrote the witness statements and re-arrested the Accused person who had been charged with grievous harm and charged with murder. PW5 produced a statement which he recorded from the Accused person as an Exhibit.

15. The Doctor who did the post mortem on the body of the deceased testified as PW6. He produced the Post mortem Report. He formed the opinion the cause of death was Pulmonary Embolism causing cardio respiratory failure.

16. This court found upon considering the prosecution evidence that the prosecution had established a prima facie case and the Accused person had a case to answer and proceeded to place the Accused person on his defence.

17. The Accused person said he stays at Tabain village. He said on 24/11/2018 at 1a.m at night he was attacked while at his house by people who started demolishing his house.

18. The Accused person who gave unsworn evidence said he started screaming when the people were pulling down his house. He said his wife was away attending a ceremony and he was with his two children aged 4 years and 2 years respectively.

19. The Accused person said he went to Fortenan Police Station and reported the incident. He said while at the police station, he was told police officers had gone to his home to arrest him and he was put in the cells. He was told he had killed someone and he was taken to court and charged with this offence.

20. I have considered the evidence adduced in this case together with submissions filed by the Defence counsel.

21. I find that there is evidence that the Accused person in this case inflicted fatal injuries on the deceased.

22. PW1 was an eye witness to the incident. The motive for the attack was revealed by PW3 and PW4 who were brother and sister to the deceased.

23. PW3 and PW4 said the deceased was opposed to a love affair between their mother and the Accused person and the Accused had threatened to kill the deceased.

24. The Accused person walked around with a weapon which PW3 and PW4 described as a machete or slasher while he used to threaten the deceased and indeed, he made good his threat and attacked the deceased and he inflicted him with fatal injuries.

25. The Doctor who performed the post mortem said the cause of death was pulmonary embolism causing cardio respiratory failure.

26. In cross-examination, the Doctor said pulmonary embolism has many causes including major fractures. He said the deceased had sutured wounds and he had been bed ridden prior to the date of death. He said the post mortem was conducted by Doctor KELVIN ROTICH who went for further studies and he produced the Post Mortem Report on his behalf.

27. I find that the Accused person with malice aforethought inflicted fatal injuries upon the deceased and motive of the murder was the deceased's objection to a love affair between the deceased's mother and the Accused person. **Section 206** of the **Penal Code** defines malice aforethought as the following amongst others: "**Malice aforethought shall be deemed to be established by evidence proving any or more of the following circumstance,**

a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not."

b. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused."

28. The court of appeal at Nairobi, in the case of *Nzuki versus Republic (1993) eKLR*, established what constitutes malice aforethought as follows,

"before an act can be murder, it must be aimed at someone and in addition it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:

i. the intention to cause death,

ii. The intention to cause grievous bodily harm,

iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensure from these acts, and commits those acts deliberately and without lawful excuse the intention to expose a potential victim to that risk as a result of those acts."

29. The Accused person took the life of an innocent who was opposed to an illicit affair between the Accused person and his mother.

30. There is evidence that there was acrimony between the Accused person and the deceased before the Accused person attacked the deceased while the deceased was in the company of PW1 an eye witness to the murder.

31. The testimony of PW1 was corroborated by that of PW2 who ran to the scene upon hearing the deceased screaming and she saw the Accused person running away carrying a machete.

32. The Accused person's defence was a mere denial. The Accused person in his unsworn statement said he was arrested when he went to the police station at Fortenan to report an incident that occurred in his house when he was attacked by some unknown people who went to his house and started demolishing it.

33. I find that the testimonies of PW1, PW2, PW3 and PW4 were corroborative and consistent and all the witnesses identified the Accused person as the person who fatally wounded the deceased.

34. PW1 witnessed the incident. PW2 saw the Accused person fleeing the scene of crime and PW3 chased the Accused person and caught up with him and the Accused person threatened to stab him with the machete as he had done to the deceased.

35. The court of appeal in ***Anthony Ndegwa Ngari versus Republic (2014)eKLR*** established what must be proved before an accused person can be convicted for the offence of murder. It stated as follows;

“For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt. They are (a) the death of the deceased and the cause of that death, (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”

35. I find that the prosecution has proved the guilt of the Accused person to the required standard beyond reasonable doubt and I convict the Accused person as charged.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 9TH DAY OF JULY 2021.

A. N. ONGERI

JUDGE