



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 11 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

KIRWA KIMAIYO.....ACCUSED

J U D G M E N T

1. The accused was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence was that **on the 16th day of February 2014 at Koitugun village in Kapcherop location within Trans Nzoia County murdered John Kimaiyo Kiprop**.

2. When the matter came up for plea the accused denied the charge. The prosecution called 7 witnesses to establish their case whose evidence can be summarised as hereunder.

PW1 Hellen Jepkosgei Kimaiyo stated that the accused was her neighbour. That on 16/2/2014 at around 9.00 pm she heard the accused quarreling with the deceased who was his father. She heard the accused screaming and he rushed to the homestead where she found the deceased body on the ground. The accused had escaped. The following day the accused armed with a panga appeared at her homestead and threatened to kill his brother one Sylvester.

3. On cross-examination she said that she found the deceased already dead and did not know who killed him.

4. **PW2 Caroline Kiptoo** is a cousin to the accused. She said that on the material day at 6.00 pm the accused and her mother were screaming and were both drunk. The accused was saying that he will kill someone. Shortly thereafter she heard people shouting and she rushed to the scene and found the deceased body on the ground with injury on the head.

5. **PW3 Nelson Kipchumba** is a cousin to the accused. He said that he heard screams emanating from the deceased homestead. He went there and found the deceased body on the ground. His wife was equally bleeding from the head and could not speak. He had earlier threatened to kill 4 people.

6. **PW4 Sylvester Kiplagat Kimaiyo** is the younger brother of the accused. He was home on the material day when he heard screams from his father's home. They rushed to the scene with his wife and found the deceased already dead and had injury on the head. Her mother had injury on the head too. He called the police who came and took the body to the mortuary.

7. **PW5 James Kimurgor** is the Assistant Chief Koitogos Sub-location. He said that on the material day, the accused mother reported the incident to him. She had also been injured. He said that the accused had several complains against him involving dispute over land with his father. He wanted a portion of his father's land.

8. **PW6 Mary Chebii Kimaiyo** is the mother to the accused and wife to the deceased. She testified that on the material day at around 7.00 pm she was with the deceased at home when the accused came and demanded land from his father, the deceased. He was told that the land had been leased out to pay fees for his younger brother. He became violent and hit the witness on the head. He equally hit the deceased on the head and he died on the spot. He went away with the panga. She went and reported the matter at the sub chief's place. The following day she went for treatment. On cross-examination she denied that they were drunk.

9. **PW7 Victor Kiplimo Kipchumba** testified that the deceased was his grandfather and that they were together that evening. The accused is his uncle. He said that he was with his grandfather that evening coming from the poshomill. He took the unga home and he heard the deceased calling. He rushed back and found that he had died and saw injuries on the head. He saw the accused running away saying that he was going to hang himself. He called his parents while at the deceased home. They came as well as the neighbours.

10. **PW8 Dr. Godfrey Obala** produced the postmortem report Dr Ouma who carried it out. The cause of death was cardio pulmonary arrest following brain tissue injury.

11. When placed on his defence, the accused gave unsworn evidence. He said that he was home that day and were discussing the issue of the land which had been leased to PW2 . He was sent to the assistant chief as his parents differed over the same issue. It was decided that he should be given back the money. He was called on a Sunday and told of some problems at home. He rushed there and found his parents fighting and he separated them. He thereafter went to the centre to watch news. He was again called by the chief to rush back home. He met his mother who gave him Kshs 2000/= to pay to a "chama". Again chief called him to go back home where he found his mother sitted and not talking.

12. His father had died. They then turned against him that's why he took off to Moiben where he was thereafter arrested and charged.

Analysis and Determination

13. Having summarised the proceedings above and perused the submissions by both counsels on record, it is apparently clear that the critical eye witness to the incident was the accused's mother PW6. The quarrel ensued as a result of the accused demanding land from his parents and when the same was not forthcoming he attacked them and fatally wounded the father and injured PW6 .

14. The rest of the witnesses arrived after the fact. Their evidence though circumstantial clearly buttressed that of PW6. PW7 evidence however in my view was critical as he was with the deceased that evening as he brought unga to him and left for his home. He came back when he heard the screams and found the accused running away and threatening to commit suicide by hanging himself.

15. The evidence of the doctor was consistent with what the witnesses stated. The injury was on the head which was attested by the witnesses.

16. The Assistant Chief's evidence equally buttressed what had been bedeviled the. The accused and his family namely land feud. It appears that he had received reports in his office where the accused had been demanding to be given land by the deceased.

17. I have read the unsworn evidence of the accused and the same holds no water. All that he did was an explanation of several phone calls made by the Assistant chief concerning the incident at home. When the Assistant chief testified, there was no reference to the fact that he called the accused that evening. The said evidence is of no probative value.

18. Consequently I find that the ingredients of Murder namely malice aforethought was established by the prosecution. By attacking both his parents with a panga, the accused must have known that the same could cause fatal injuries which it did. There was no evidence of provocation on the part of the deceased. There was equally no evidence that the deceased nor the accused were drunk.

19. In the premises I find that the prosecution has discharged its mandate under the provision of Section 203 of the Penal Code. I convict the accused of the murder of the deceased herein.

Delivered, signed and dated at Kitale this 11th day of February, 2019.

H.K. CHEMITEI

JUDGE

11/2/19

In the presence of:-

Mr Omoria for the State

Wanyama holding brief for Bororio for Accused

Accused – present

Court Assistant – Kirong

Judgment read in open court.