



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT ELDORET

CRIMINAL CASE NO. 12 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

KENNETH KIPKEMBOI KIMITEI.....ACCUSED

JUDGMENT

1. **KENNETH KIPKEMBOI KIMITEI (the accused)** – faces a charge of murder Contrary to **Section 203 Penal Code** as read with **Section 204** of the **Penal Code** the particulars being that on 17th January 2014 at **CHEMURGOI** village, **CHEPSIGOT** Sub-Location, **EPKE** Location within **ELGEYO MARAKWET** county, he murdered **TAPILEI SOTI KIBET**. He denied the charge.

2. On 17.01.2014 at 10.00pm **SKK** (PW1) then in Std 8 was studying with his friend **R** and **E** in his room, At 10.40 pm, they retired to bed, but kept chatting until 11.00pm, when they heard an old woman named **TAPILEI** (who was their neighbour), talking to herself. She lived just 20 meters away from the room where they were. Shortly, they heard footsteps moving past their room, as there was a road passing just by PW1's room.

3. PW1 stated that he heard the accused ask

“What are you doing at this time of the night.”

The old lady replied,

“I am relaxing at my home.”

The accused then responded:

“You know I can come there and break you into pieces.”

4. There was moonlight, so the three got up and stood on the bed and peeped through a ventilation in their room. PW1 stated that there was a very bright moon and he saw the accused as he spoke to the old lady saying

”I can come to break you into pieces just now.”

And the old lady said

“You come.”

5. They watched as the accused walked for a distance, then returned after 10 minutes and entered the old lady's house. According to PW1, the accused had a jembe handle stick, and shortly, they heard the old lady shout out her son **MICHEAL**'s name. Her voice sounded strange, like that of someone dying or in distress.

6. The boys remained glued to the vent through which they were peeping, and after 15 minutes, the accused came out of the old lady's house and walked away – they saw this very well as the old lady's door faced them.

7. Upon coming out of the house, the accused met a lady named **MAMA MUTURU**, and he asked her where she was going to and inquired as to how she was fairing. Mama Mтуру said she was going to her home to sleep.

8. After a short distance, the accused met **MZEE HILLARY KORIR** whom he asked where he had come from and where he was going to and then later said he had come from **TULLOW** and was going to sleep.

The accused then walked away. However he returned after 10 minutes carrying the stick but now his dog was following him – he walked past but returned after 10 minutes and entered the deceased’s house where he remained for about 5 minutes, then walked out pressed the door as though to lock it, then went away. The next day, the boys learnt the old woman had died.

9. They recalled the events of the previous night, especially the fact that after the accused entered into her house, they heard her scream, then never heard her again, so they believed it was the accused who had killed her.

10. PW1 explained that they did not intervene as they feared the accused who is reputed to be wild, and in any event he had a jembe stick. They decided to inform the deceased’s son what they had witnessed.

11. It was his further evidence that from his room to the deceased’s house was about 20 metres and her door faced his room. The fence was 3 metres from the road, so he could see passersby clearly as there was moonlight and in any event he had known the accused since his childhood, as he was their neighbour.

12. On cross examination PW1 stated that the deceased was an alcoholic and many times in her drunken state, she would talk to herself for a while into the night.

He had never seen the accused and the deceased quarrel in the past.

He stated:

“...the window is at the front place, where we peeped through, is a ventilation gap between the roof and wall, and one can see through very well what is happening outside.”

PW1 also explained that the next day he did not immediately tell anyone what he had witnessed the previous night because he wanted to wait first and hear whether anything sinister had happened.

RK (PW2) who was with PW1 gave a similar narrative to what PW1 said, explaining their curiosity was drawn by the exchange between a man’s voice and the old lady – where the man said,

“I will come there to break you into pieces.”

And the old lady responded.

“I am not scared, come.”

He confirmed that they were peeping through a ventilation between the roof and wall. He too heard the old woman scream her son Micheal’s name as though she was being strangled and shortly saw the accused leaving her house. Thereafter he never heard the old lady’s voice again.

He too was categorical that he was able to see and recognize the accused as there was a bright full moon, and accused had an object which looked like a jembe stick. The accused was known to him.

On cross examination he stated they observed the scene for about 30 minutes.

13. The same evidence was corroborated by **EK**, who was in the company of PW1 and PW2 and confirmed exactly the chain of events as described by his two companions.

He was also categorical that there was a full bright moon shining that night. He too knew the accused as he lived in the same neighbourhood.

He explained that they feared immediately disclosing what they had witnessed that night, in case they were blowing hot air, so they adopted a wait and see approach.

14. **MICHEAL LIMO KIBET** (PW4) the deceased’s son confirmed that on the morning on 18.01.2014, he went to his mother’s house and found her lying on the floor dead. He did not observe any injuries on her, but when post mortem was conducted, the Doctor said deceased appeared to have been hit on the side of the head and neck. Later PW1-3 told him of their sighting of the accused on the previous night.

15. **IMMACULATE TANUI** (PW5) confirmed that while on her way home from work at about 11.00pm. She met the accused just as he emerged from the deceased’s compound accompanied by his dog. He greeted her and asked where she was going to, she told him she was going home. She also asked him where he had come from, to which accused said he had come from the **TULLOW** route. He had a stick. PW5 then walked towards her home but as she turned she saw **HILLARY KORIR** (PW5).

16. **HILLARY** confirmed being around the area on **17.01.2014** at **11.00pm**, he was walking to go and sleep at the home of one **CHARLES** when he saw the accused and PW5 standing and talking, briefly before parting ways. He met the accused who greeted him and asked where

he was going to. He said he was going to sleep, it was his evidence that:

“When I saw PW.... and accused they were standing near the old lady’s house. Accused had a jembe stick and his dog...”

17. The post mortem report produced showed that the cause of death was assault with subdural and epidural haematoma, liver disease and lung fracture. The report was produced by the Investigating Officer **PC MWITHI DAVID** (PW7) with the consent of defence counsel.

18. In his unsworn defence, the accused stated that on the date in question, he left for his home at about 8.30pm using a certain path leading from his father’s homestead. He confirmed meeting and talking to PW4 and PW5 and along the way, before getting to his home. The next day he learnt that the deceased had been found dead inside her house. He went to the scene where he found a crowd.

19. On 25th, after the deceased’s burial, he met some people on the way who attacked him saying he was responsible for the death. He fled to his home before he was eventually arrested.

20. The defence counsel (**MR OKARA**) submitted that the accused’s presence along the road near deceased’s home was easy to explain because that was the road he always used on his way home.

Further that there was no concrete evidence to place the accused at the scene of crime. Counsel also poked holes at the post mortem findings saying the report suggested the deceased suffered lung and liver disease and these could have caused her death.

Counsel maintained that the circumstances did not link the accused to the death. There is the uncorroborated evidence of most of the prosecution witnesses that on the date in question at 11.00pm, the accused was seen coming from the deceased’s compound.

Indeed he confirms being around the vicinity, albeit for a different reason. PW1, 2 and 3 were consistent in their evidence regarding the accused’s conduct – being able to keep them under their observation that a vent, between the roof and wall, and with the aid of moonlight. They all confirmed seeing the accused getting into the deceased’s house, and shortly they heard a strangled scream from the deceased then saw him walk away. The accused had made good his threat to deceased that he could break her into pieces and seems to have been irked by her challenge to “bring it on” saying she did not fear him.”

21. Although the post mortem report refers to liver and lung disease, there is also a finding of a bulge in the head with both epidural and subdural haematoma. The accused had a jembe stick – he got into the house after threatening to break up the deceased. The three boys heard a strained cry, then silence, saw the accused walk out of the house, and the next day she was dead.

22. There is nothing, to suggest that anyone else got into the house after the accused had left that night, and the circumstances point inculpably to the accused, and to the exclusion of any other reasonable hypothesis. I am satisfied the evidence proves the charge against the accused and his defence is rejected as being evasive. I return a finding that accused **KENNETH KIPKEMBOI KIMITEI** is guilty of the murder of **TAPILEI SOTI KIBET**.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF MARCH 2019

H. A. OMONDI

JUDGE