



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL CASE NO. 16 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

MICAH KIPKURUI RUTO.....ACCUSED

JUDGEMENT

Introduction

1. The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya, in respect of the deceased, Grace Chepkorir Mosonik.
2. The accused pleaded not guilty.
3. The prosecution called nine witnesses in support of the charge.
4. The accused made an unsworn statement in his defence and did not call any witnesses.

The case for the prosecution.

5. The prosecution called Mercy Chepkemoi (Pw 1), who is the sister in law to the accused. It was her evidence that on 11th November 2016 at 6.00 pm the accused dug near the door of the house of the deceased to fix another door. The deceased refused the accused to fix the door. As a result, the accused assaulted the deceased. Pw 1 was unable to recognize the weapon, which the accused used in assaulting the deceased. The accused is the son of the deceased. Pw 1 recognized the accused due to light from a tin lamp. According to Pw 1 the accused had no differences with his deceased mother.
6. In addition to Pw 1, the prosecution called Mercy Cherotich Ruto (Pw 5). Pw 5 is the daughter of the accused. She testified that the accused dug at the door step of the deceased in order to fix a door. After he was refused, the accused became enraged. As a result, he forced the door of the that house open. As that time the accused was armed with an iron rod. The accused then threatened the deceased saying that: *"now I will kill you."* The accused then hit Mercy Chepkemoi on the head, Daisy Chepng'tich and Daisy Chebet. Thereafter he hit the deceased on the head, arm and on the leg. It was her evidence that the accused secretly used bhang and drank alcohol.
7. Furthermore, the prosecution called Julius Kiplangat Manywele (Pw 2). Pw 2 testified that he arrested the accused. According to him, the accused was mentally perfect. The prosecution also called Joseph Cheruiyot Koech (Pw 3). Pw 3 testified that he had screams. He then went there and found people beating the accused. As at that time, the accused was lying down. He also saw the deceased, who was unconscious and had head injuries.
8. In addition to the foregoing witnesses the prosecution called Wesley Rotich Ng'etich (Pw 4). Pw 4 is a neighbour to the accused. He heard screams and proceeded there. While en-route, he found the accused standing on a foot path. The accused was armed with an iron rod. The accused then asked Pw 4 as to why people had beaten him. It was his evidence that the accused used to quarrel with the deceased and that the accused was not suffering from any mental illness.
9. Furthermore, the prosecution called Samuel Kipng'eno Laboso (Pw 7). Pw 7 identified the deceased to the doctor who performed a postmortem on the body of the deceased. According to him, the deceased had cut wounds on the left head, left arm and right leg.
10. The prosecution also called three police officers. The first one was No 59356 PC Mark Kipkoech (Pw 6). Pw 6 testified that he re-arrested the accused on 26th November 2016 at 8.00 am after he was brought by members of the public. He then took him to hospital for

treatment for minor injuries.

11. The other police officer called was No. 77858 Cpl Charles Chamwada (Pw 8). He testified that the postmortem on the body of the deceased was performed on 28th November 2016. The body had three deep cut wounds on the right side of the head. Pw 8 produced the postmortem report as exhibit 1 with the consent of the defence counsel. According to the report, the deceased was elderly and had multiple cut wounds and fractures in the head. The cause of death was due to massive hemorrhage from those deep cut wounds.

12. Finally, the prosecution called No. 69000 PC Slyvanus Ndolo, who was the investigating officer. It was his evidence that the accused broke the windows of the house of Mercy Chepkemoi and gained entry to that house. The accused then proceeded to assault the deceased and in the process he inflicted wounds on the head of the deceased with a panga. He also assaulted his children.

The defence case

13. After being put on his defence, the accused elected to make an unsworn statement, in which he denied the charge. It was his evidence he drunk tea with the deceased and then left for Tendwet centre. He then returned home at 6.00 pm. Thereafter he started to fix a door to the house of the deceased. The children screamed. He unsuccessfully tried to calm them. Thereafter villagers arrived, and a fight followed. The villagers started to beat him. The following morning, he was taken to a dispensary by Joseph Koech and Manywele, where he was treated for the head and left arm injuries. Then his brother David Kebenei, took him to Ololulunga police station. Thereafter he was taken to Narok police station and was then charged. Finally, he has urged the court to forgive him if he committed the offence.

Issues for determination.

14. I have considered the whole evidence and the applicable law. As a result, I find the following to be issues for determination.

1. whether or not it is the accused who caused the death of the deceased.
2. whether or not the evidence discloses murder or manslaughter.

Issue 1.

15. I believe the direct evidence of Mercy Cherotich Ruto (Pw 5) and Mercy Chepkemoi (Pw 1) that the accused without any provocation assaulted his deceased mother by inflicting deep cut panga wounds in the head. Their evidence was credible and cogent. Pw 5 is the daughter of the accused while Pw 1 is the sister in law to the accused. These witnesses have no reason lie against the accused. The defence of the accused is a bare denial. In his unsworn statement the accused admits being at the scene of crime. The defence of alibi is therefore not available to him. In his unsworn statement, the accused has urged the court to forgive him if he committed the offence. According to the postmortem report exhibit 1, the deceased had multiple cut wounds and fractures in the head. It is the massive bleeding that caused her death. I therefore find that the accused caused the death of the deceased.

Issue 2.

16. The attack against the elderly deceased by the accused was not provoked. The accused in addition to attacking his deceased mother also assaulted his own children, who similarly did provoke him. In terms of section 206 of the Penal Code (Cap 63) I find that the accused had malice aforethought, that is, the intention to murder the deceased. In the circumstances, I find that the accused is guilty of murder.

Issue 3

17. In the light of the foregoing, pursuant to the provisions of 322(1) of the Criminal Code (Cap 75) Laws of Kenya I hereby convict him of murder contrary to section 204 of the Penal Code.

18. The issue of sentencing is subject to a pre-sentencing hearing.

19. Judgement dated, signed and delivered at Narok in open court this 1st day of April, 2019 in the presence of Mr. Omwega for the state and Mr. Kiptoo for the accused.

J. M. Bwonwonga

Judge

1/4/2019