



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT ELDORET

CRIMINAL CASE NO. 49 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

EDWARD KIPKEMBOI SAINA.....ACCUSED

JUDGMENT

1. EDWARD KIPKEMBOI SAINA (*the accused*) is charged with murder Contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars being that on 4th April 2013 at **KABILAT** village in **WARENG** district within **UASIN GISHU** County, he murdered **ELIZABETH CHELAGAT SAINA** (deceased).

The accused who is represented by **MR MITEI** advocate, denied the charge.

2. On 4.4.2013 at about 7.30am, **JOSEPH KEMBOY RUTO** (PW5) a brother to the deceased, was at his home within **KABILAT** village, when the deceased arrived accompanied by her estranged husband (*the accused*) who had separated from her and had only returned on 2.4.2013.

She borrowed a panga to go to shamba in Sangalo, and they left.

3. At about 9.30 am (**JOSEPH CHEPSIRON**) PW6 was coming from his farm, returning home from a tea estate, when he saw the accused and the deceased clearing the farm. He greeted them but only the deceased responded.

4. Meanwhile **LYDIA CHEROTICH** (PW1) a sister to the deceased, was at her farm within Kabilat village, when at about 11.00am, she heard screams coming from the direction of the deceased's farm. Earlier, the deceased had passed by her home to say she was going to the shamba with her husband **EDWARD KIPKEMBOI SAINA**. PW1 was not unduly bothered by the screams and continued with her farm work until 2.00pm when she went home, then went for a chama meeting.

5. PW1 left the chama meeting at 6.20pm and passed by their mother's home and asked whether their mother had seen the deceased from the time she left to go to the shamba, saying she had heard screams from the direction of deceased's farm.

6. The mother **SARAH CHEPKURGAT** said;

“She has not been seen, yet she had gone to the farm with her husband.”

PW1 reflected on conversations she had, had with the deceased kept saying that accused used to tell her;

“One day I will kill you.”

Deceased repeated that so many times, but PW1 kept encouraging her that it was not possible for someone she had lived with and borne his child to do that.

However PW1 became alarmed and decided to call her brother **JOSEPH KIPKEMBOI**, and they went to the farm where the pair had been working on.

It was raining, and darkness was falling so the search around the place yielded nought.

7. PW1 noticed that by the roadside was a pile of firewood, and they alerted the elders. However since darkness was falling they returned to their homes and the elders advised them to make a report to police. A report was made at 12.00am. PW1 observed that even as they were searching for her sister, the accused was nowhere to be found.

8. Apparently information was got that the deceased had been talking to one **MICHEAL**, so the villagers confronted **MICHEAL**, treating him as a suspect. They took away his phone as he appeared to be in a state of panic, and upon checking his call logs, they realized he had made very many calls to the accused, the whole day, until evening. So the chief apprehended **MICHEAL** and locked him up.

9. Eventually the deceased; body was recovered in her shamba covered with debris from the shamba (i.e stalks and plants cut from the land).

PW explained that;

“My sister and accused were not living together as he would visit her, may be once or twice. My sister always said accused kept telling her that one day he would kill her, and she was fearful...”

10. On cross examination PW1 stated that she did not see the deceased in the company of the accused, but the former had told her she was going to the shamba with her. However she saw the accused as he was walking and he said to her

“We are going to the shamba.”

She was categorical that although she did not witness the accused killing her sister, he was the last person seen accompanying the deceased to the shamba and after that, she was next found dead.

11. PW5 confirmed that his sister indeed inquired from him about the whereabouts of the deceased who suggested that he asks Micheal about their sister as she had seen him talking to her. On his way, he met the said Micheal who said that while at his shamba (which bordered that of the deceased), he heard screams from the farm but he did not see what had happened. PW5 requested to be accompanied by **MICHEAL** to the shamba, and he mobilized more people to help search for the deceased.

12. Eventually the body was recovered as earlier discussed.

He observed that she had an injury on the side of her face. He also identified the panga he had lent the deceased as Ex.2) – the one was the one she had borrowed from another sister, he recognized it because he had used it several times in the past. He also pointed out that on the material date, the accused did not return from the farm.

It was his evidence that:-

“Edward and Elizabeth had domestic strife ad had separated for 4 years and I only just learnt that morning that he had returned 2 days earlier...”

13. **JOSEPH PW6** was categorical that he had seen the accused in the company of the deceased as they were slashing plants on the farm, He knew the accused very well as the deceased’s husband but they had separated, and the deceased had returned home with their children. He had seen the accused on several occasions in the company of the deceased – he would come and leave.

He was among those who recovered the body and noted that she had a cut wound on the neck, infact the head was only held to the neck by a piece of skin. She also had cuts on the head and hand.

On cross examination he stated

“...I saw them at about 9.00am on their farm as I was going home. I do not know who killed Elizabeth but I last saw her with the accused...”

14. **JULIUS MENGICH** (PW2) on cross examination explained that he is an in-law to the deceased as he has married her sister and stated:

“...I heard screams from the forest and realized it was the deceased. I heard many people screaming. I did not go to the scene immediately. I went later... I do not know who killed deceased...”

DR. MACHARIA BENSON (PW3) who produced the post mortem report on behalf of **DR. NDIANGUI** stated the findings were that the body was fully clothed with blood stained muddy clothes.

In the pocket were a few maize seeds. She had multiple cut wound at the back of the neck. The cervical (neck spine) had been severed and the head was only held by a small piece of skin. There was a large deep cut wound extending from the right eye to the back of the head, plus severed cut wounds on the chest wall at the back. The main blood vessels which take blood to the brain had been severed.

The cause of death was bleeding due to multiple cut wounds on the neck. The post mortem report was produced as Ex.3.

15. On 18.04.2013, **NELSON NYANGIA SAMOEI** (PW4) was informed by some children who were herding animals within the forest,

that they had found a panga which had been used and was hidden within the forest. He called **Joseph Ruto** to accompany him into the forest, and found 2 pangas which had blood stains. The pangas were handed over to police and were later identified by PW5 as the ones the deceased had.

16. PC WILFRED NYASARE (PW7) took over investigations from the late **Cpl JAMES KIMAIYO**, he produced the two pangas which had been handed over to **Cpl JAMES** as Exhibit 2a and 2b. Photographs were taken of the body showing the injuries at different angles and he produced them as Exhibit.3.

17. In his unsworn defence, the accused stated that on 4.4.2013, he woke up in the morning and planned the day's chores with his wife. She was to go to town. She said someone had asked her to do some work for him in their shamba and she requested him to accompany her to negotiate the pay. He obliged, the person had come, so he helped her to plough. Shortly the person came, negotiated the price, then accused left and came to Eldoret town. He named the person as **MICHEAL YEGO**.

18. At night when he called his mother, he got to learn that his wife had been found dead in the shamba. He was in shock and went to make a report at the police station but he ended up being locked and charged,

As far as he is concerned, the person he had left with his wife in the shamba was **MICHEAL YEGO** who was arrested as a suspect but later released and converted into a witness although he never testified.

19. There is no dispute that the deceased and accused went together to till a parcel within the forest. There is also no dispute that they had two pangas with them and had begun clearing the land. It is also not disputed that the deceased never returned home from the farm nor were the pangas ever returned to the persons who had lent them out – they were later found hidden within the forest.

The deceased's body was found with severe burned injuries, buried with debris within the same land she had been tilling. The question is who would have wanted her dead?

20. There were no eye witnesses to the incident – the closest it got to was that the couple were seen together, and after the deceased disappeared, the accused also disappeared. He claims to have come to Eldoret town on an undisclosed errand, and is not even specific as to which part of Eldoret town he came to.

There is also the evidence by PW1, PW5 and PW6, to the effect that the relationship between the accused and the deceased had soured resulting in the deceased returning to her ancestral home with the children. Accused did not deny this.

There is also the unchallenged evidence of PW1, that on many occasions the deceased had expressed fear for her safety as accused had repeatedly vowed to kill her one day.

The totality of this creates a chain whose strand is not broken by any other hypothesis. Even though **Micheal** was adversely mentioned, and he did not testify, there was not motive suggested as to point a finger at him. The evidence inculpably points to the guilt of the accused and no one else. His defence is thus rejected as an afterthought which was never raised during cross examination of any of the prosecution witnesses.

The prosecution evidence remains unshaken by his version of even and it is sufficient to sustain a conviction.

Consequently I return a finding of accused being guilty of the murder of **ELIZABETH CHELAGAT SAINA**.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 9TH DAY OF MAY 2019

H. A. OMONDI

JUDGE