

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO 7 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

EVANS CHERUIYOT KIPTOO.....ACCUSED

JUDGMENT

1. The accused **EVANS CHERUIYOT KIPTOO** is charged with murder contrary to section 203 of the Penal Code, as read with Section 204 of the same. The particulars are that on 29th January 2018 at **KAPSAYANAN village, in KAPYEGO division, within ELGEYO MARAKWET** County, he murdered **JOHANA KIPROP KANYITEI (deceased)**. The accused denied the charge.

2. The accused's mother was a *changaa* brewer, and on the date in question, revellers (among them being **RICHARD KIPLAGAT (PW1)**, and **JOHANA KIPROP KANYITEI**) had gathered in the homestead. The accused begun insulting his mother **TRUFENA**. The accused's mother came out, and spoke to the revellers saying "*Please help me. He wants me*"

3. Meanwhile the accused got into the house, and came out armed with a bow and arrow. PW1 tried to prevaricate him, but he told the former to leave. **JOHANA** urged the accused to calm down, and tried to take away the arrow. It was then that PW1 realized the accused was aiming his arrow at him, so PW1 picked up a stick from the fence, and hit the accused with it. The accused shot arrows at PW1, and the same caught him under the eye, and the arm. The accused also released an arrow which struck **JOHANA** on the chest.

PW1 was categorical that the deceased had merely held the accused and attempted to intervene, telling him "**wewe wachana**".

4. **WESLEY KIPRONO YANO (PW2)** a brother to the deceased received information about the incident, and that the deceased had been rushed to **KAPAYEGO HEALTH CENTRE**, and from where they were referred to **AIC KAPSOWAR MISSION HOSPITAL**. Unfortunately, the deceased succumbed to his injuries at 10.00pm

5. **DR WILFRED KIMOSOP (PW3)** who produced the P3 form on behalf of DR ABDI (who had performed the post mortem) stated that externally the body had a wound on the mid sternum, around the 4th rib, internally, there was a penetrating wound on the right side of the heart. The cause of death was hypoglycemic shock due to the cut wound. On cross examination, he confirmed that the injury was caused by a sharp object which penetrated through the ribs into the heart.

6. **SGT DAN OLALO AWITI (PW4)** who conducted investigations found that after the accused had struck the deceased with the arrow, whose head was stuck in the deceased's chest he escaped. Those who rushed to assist the deceased, removed the arrow head, and took him to hospital. The arrow was cleaned before being handed over to the investigating officer, so the question of **DNA** sampling was out of question

7. In his sworn defence, the accused confirmed that his mother used to brew liquor at their home, and on the date in question, several patrons including **PHILLIP KIPLAGAT ROTICH** and the deceased were present. He left to go and visit his girlfriend named **PHILARY CHEPKURUI**, and on his way back, he met the deceased who announced to him "**I will come to kill you**". The deceased did not respond. Later while the accused was outside his door, the deceased arrived and said to him "**I have come to kill you**"

8. The accused explains that he got scared and got inside the house, and armed himself with a bow and arrow. It is his contention that there had been bad blood between him and the deceased as they were competing for **PHILARY CHEPKURUI'S** attention. So sensing that the deceased had gone to attack him, the accused released the arrow which struck the deceased on the chest. He denied claims that the incident arose when he threatened to beat up his mother.

9. On cross examination, he admitted that he had not told police about the love triangle. He denied claims by **RICHARD** that he shot or attacked in, saying the scars he displayed in court were as a result of an old unrelated injury.

10. It is not disputed that the accused fatally shot the deceased using an arrow on the date and place in question. What arises for determination is whether this was a premeditated act, or whether the accused acted in self-defence due to provocation by the deceased. All the prosecution witnesses are in agreement that prior to that date, the accused and the deceased had cordial relations. Although the accused claims that the deceased had threatened him, and that there was some pre-existing rivalry due to having their amorous sights on the same object, this was an afterthought which was never raised during cross examination of the prosecution witnesses.

11. What is clear from the evidence is that the accused acted on the spur of the moment. He had wanted all the revellers to leave the home so as to gain access to his mother (whether it was to assault her, or for some other mischief), and he was irked by the deceased's resistance, and in anger, released the fatal arrow, I do not think he had much time to consider the consequences of his actions, which nonetheless resulted in the loss of a life. In the circumstances, I find that the evidence discloses a lesser offence, and in compliance with **section 179 (2) of the Criminal Procedure Code**, I reduce the charge to manslaughter contrary to section **202** of the **Penal Code**, and convict the accused on this reduced charge.

Delivered, Signed and Dated this 19th day of September 2019 at Eldoret

H. A. OMONDI

JUDGE