



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL CASE NO 41 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

JOHANNAH KIPLANGAT TEIBEK.....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, Isaiah Ng'eno, in which it is alleged that he murdered the deceased at Usonik village in South Narok on 16th November 2017.
2. The accused pleaded not guilty. In his defence the accused made an unsworn statement. He did not call any witness in his defence.
3. The prosecution called six witnesses in support of the charge

The case for the prosecution

4. The prosecution called Joseph Kipkemoi Korir (Pw 1). Pw 1 testified that he identified the body of the deceased to the doctor, who performed a postmortem examination on the body of the deceased. He saw a stab wound on the left side of the chest of the body of the deceased. The prosecution then called Mathew Yegon (Pw 2). Pw 2 testified that he is a boda boda rider and that accused and deceased were friends. They used to drink alcohol together.
5. The prosecution also called Zeddy Chelangat (Pw 3). Pw 3 testified that she sells tomatoes and vegetables. She continued to testify as follows. The accused is her brother in law. At about 4.00 pm she heard screams from Peter Rotich (Pw 5) and Mathew Koskei (Pw 4) that someone had died. The accused was also outside her house he heard these screams. She was shocked and as a result she ran away. She did not know what caused the death of the deceased. It was also her evidence that she owed Pw 4 Shs 100/=. Her other evidence was that Peter Rotich was her cousin and that other people had gone there to sit at her home.
6. The prosecution also called Mathew Koskei (Pw 4). He is a turn boy and both the accused and deceased were his neighbours. It was his evidence that on 16th November 2017 he had gone to the boma of Pw 3 to greet her. There he found Robert Cheruiyot (not called as a witness), Joseph Bimbanet (also not called as a witness), Pw 5 and the accused. The deceased then arrived and went to greet the accused. They then sat together. Suddenly he saw the accused and deceased fighting. He then saw blood oozing from deceased which stained his white shirt. The accused then escaped. He then chased the accused, leaving the deceased in a kneeling position. The deceased and accused were seated apart from them four paces away. He then saw Cheruiyot (not a witness) holding the accused. It was his evidence that when the fight between the accused and the deceased started, the two were seated four paces away from them. The fight started after thirty minutes after sitting together. The fight was not preceded by a quarrel. The accused and deceased were not friends. There was no alcohol in the home Pw 3. It was the evidence of Pw 4 that it was the deceased, who got up and hit the accused with fists. Robert Cheruiyot separated the accused and the deceased. Pw 4 then saw blood on the shirt of the deceased. Next to the body of the deceased was a knife. The time was between 3.00 pm and 4.00 pm. Pw 4 went and told the parents of the deceased that the accused had injured the deceased.
7. Furthermore, the prosecution called Peter Kipng'etich Rotich (Pw 5). Pw 5 is a boda boda rider and a brother in law to the accused. He also was a neighbour to the deceased. The accused, the deceased and Pw 4 were at the home Pw 3. He had gone to the home of Pw 3 to collect his debt of Shs 100/= from Pw 3. He was awoken up by screams, since he had fallen asleep. He did not see who killed the deceased.

However, he continued to testify that the deceased and the accused were seated together. As a result of the screams, Pw 5 ran away to the river. He did not witness any fighting in that home.

8. Finally, the prosecution called No 88380 PC Daniel Owuor (Pw 6). He was the investigating officer. He testified as follows. After being detailed by the CID boss to investigate the case, he went to the home of Pw 3, which was the crime scene. Upon arrival there Pw 3 took them to where the accused and deceased were seated on a bench 20 metres from the main house. After a short conversation between the accused and the deceased, the accused was seen stabbing the deceased. The deceased collapsed and the accused then ran away. The accused was pursued and arrested by members of the public and was then taken to Mulot police station. The knife was not recovered, although he had gone to that home with a knife hidden in his loins.

9. It was the further evidence of Pw 6 that no one saw the accused stab the deceased. The cause of the fight between the accused and the deceased was that the deceased wanted to take the padlock from the accused by force. The deceased and accused were friends and they sat together apart from those who were in that home. The deceased and accused were friends and had not quarreled before they fought. There was liquor that was sold in that home of Pw 3.

The case for the defence

10. Upon being put on his defence the accused elected to make an unsworn statement. He intended to call one witness, and he sought the assistance of the court in that regard. A witness summons was issued and it proved difficult to trace the witness. He then decided to dispense with this witness.

11. He stated that he is a farmer and he also digs pit latrines. On 16th November 2017 he went to the house of Zeddy Chelangat (Pw 3) after being paid Shs 1'000/= for digging a latrine. In the house of Pw 3 he found Mathew Koskei and Peter Kipng'etich Rotich. There were many other people there. He drank three cups of chang'aa, which he bought from Pw 3. As he was drinking the deceased and other people including Isaiah arrived and entered the house. They continued to drink. The accused later felt he was drunk and therefore he decided to go to his home, which is a distance of one kilometer away. While he was 600 meters away from the house of Pw 3, he heard people following him. Those people were with the deceased. Those people were saying he was at the house of Pw 3. He then asked them as to why they were saying he was at the house of Pw 3. They then arrested and handcuffed him. They rang the chief who took him to the tarmac and was eventually taken to the police station.

12. He denied being armed with a knife while at the house of Pw 3. He stated that Peter Kipng'etich Rotich and Pimbanet did not testified truthfully. Pw 3 never told the court that the accused and other people were drinking chang'aa in her house. She also did not tell the court that there were people fighting at place.

Submissions of counsel for the accused.

13. Ms. Nchoe, counsel for the accused adopted her submissions which she filed at the close of the prosecution case. She submitted that the six prosecution witnesses were not credible witnesses. None testified seeing the accused stab the deceased. Based on the Court of Appeal decision in Ndungu *Kimanyi v Republic [1979] KLR 2811*, she submitted that the court should not rely on the evidence of an unreliable witness; for it is unsafe to do so. She submitted that none of the witnesses saw the accused stab the deceased. The murder weapon was not recovered. Robert Cheruiyot who separated the deceased and accused was not called as a witness. The evidence against the accused was therefore circumstantial in nature, which did not irresistibly point to the accused alone as the person who murdered the deceased. In that regard, counsel cited the case of *Teper v The Queen (1952) AC 480 at 489*. She therefore urged the court to acquit the accused.

Submissions of counsel for the prosecution

14. The prosecution did not file any submissions as they do not have a right to submit at the close of the main trial. This is in accordance with section 310 as read with section 161 of the Criminal Procedure Code (Cap 75) Laws of Kenya, since only the Director of Public Prosecution can file written submissions.

15. I have considered the entire prosecution and defence evidence in the light of the applicable law. As a result, I find that the following are the issues for determination.

1. Whether or not the evidence irresistibly points to the accused as the person who fatally stabbed the accused.
2. Whether or not the evidence discloses murder or manslaughter.

Issue 1.

16. I find that it is common ground between the prosecution and the defence that the accused was at the crime scene. He himself admitted being at the crime scene and to have drunk three cups of chang'aa. Mathew Koskei (**Pw 4**) who also was at the same scene of crime saw the accused and the deceased fighting. He then saw blood oozing from the deceased. The blood appeared on the white shirt of the deceased. The accused then escaped. There is further evidence from Pw 4 that the deceased and accused sat apart four paces away from the other people, who were at the scene of crime. He at that time saw deceased in a kneeling position. There is further evidence from Peter Kipng'etich Rotich (Pw 5) that the deceased and accused were seated together. The cause of death was due to cardiopulmonary arrest due to severe hemorrhage and lung and myocardium injury, following a puncture wound on myocardium. This is consistent with a knife stab wound.

17. Furthermore, there is evidence from the investigating officer that the accused stabbed the deceased as a result the deceased collapsed. The accused then ran away. He was then pursued and arrested by members of the public. They then took him to Mulot police station. His other

evidence is that the deceased and accused sat apart from the other people and that they were friends. It was also his evidence that liquor was sold in the home Pw 3. The evidence of the accused was that the prosecution witness in particular Pw 3 did not tell the court that she was selling chang'aa in her house. I believe the accused that Pw 3 was selling chang'aa at her house. This explains the presence of many people in her home. The prosecution witnesses were not very candid in respect of the chang'aa being sold. They appeared to shield PW 3 from being prosecuted for being in possession of chang'aa.

18. After considering the entire evidence, I find that the circumstantial evidence irresistibly points to the accused as the person who fatally stabbed the deceased. I do not believe the accused that he did not stab the deceased. I therefore reject his defence evidence, because it is incredible.

Issue 2

19. I find that the evidence discloses manslaughter as the deceased was the aggressor. He was forcefully taking a padlock from the accused.

20. The upshot of the foregoing is that I find that the prosecution has proved beyond reasonable doubt that the accused committed the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. I therefore convict him accordingly.

Judgement signed, dated and delivered in open court at Narok this 14th day of October, 2019 in the presence of Ms. Mercy Nyaraita for the state and Ms. Irene Nchoe for the accused.

J. M. Bwonwong'a

Judge

14/10/2019