



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NO.69 OF 2014**

**REPUBLIC.....STATE**

**VERSUS**

**PHILIP KIPLAGAT RONO.....ACCUSED**

**JUDGMENT**

1. The Accused Person, Philip Kiplagat Rono is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence, as contained in the Information are that the Accused Person is alleged to have murdered Nickson Kibiwott on the night of 31/03/2014 at Shauri Yako Village in Koibatek District within Baringo County.

2. Plea was taken before Justice Anyara Emukule on 06/08/2014. The Accused Person pleaded not guilty. It fell on Justice Maureen Odero to hear the case. The Learned Judge heard seven Prosecution witnesses. The Prosecution then closed its case. The Learned Judge returned a ruling that a prima facie case had been established against the Accused Person and put him on his defence.

3. I took over the conduct of the proceedings at that stage Lady Justice Odero having been transferred out of the station. I complied with the provisions of section 200(3) as read together with section 201(2) of the Criminal Procedure Code and explained the options available to the Accused Person. Under the advice of his counsel, Mr. Magata, the Accused Person elected to have the case proceed from where it had reached.

4. I then complied with section 306 of the Criminal Procedure Code and explained to the Accused Person in Kiswahili, a language he confirmed to be fluent in, his options on defence. The Accused Person knowingly and voluntarily, even after advice of his Counsel, elected to remain silent. He also informed the Court that he had no witnesses to call.

5. Both the Defence and the Prosecution then indicated to the Court that neither party intended to make submissions. They requested the Court for a judgment based on the Court record.

6. The Prosecution called seven witnesses. The evidence that emerged from them was as follows.

7. Monica Murugi Muchoki testified as PW1. She sells chang'aa and beer in her house. Both the Accused Person and the Deceased were her regular customers. On 30/05/2014, a certain Kiplagat and the Deceased went to Monica's house to drink. A certain Mzee Chege who had accompanied them bought them some chang'aa and left. Thereafter, the Accused Person came to the house as well. She ordered for a beer which was duly served. Kiplagat and the Deceased were initially drinking from outside the house while the Accused Person was inside. However, Kiplagat and the Deceased moved into the house when it began to rain. Shortly thereafter, Monica says she heard loud noises coming from the living room where the guests were. She rushed there. She found the Accused Person and the Deceased fighting. With the help of one Mwangi, she helped separate them and took them outside. She escorted the Accused Person to the gate and instructed him to go home. According to Monica's testimony, the Accused Person went away but came back a little while later. He sat outside the gate.

8. Monica says that the Deceased remained in her house until around 7:30pm. By that time the Accused Person was seated outside the gate by the road chatting with one Mwangi. Monica went about her household chores. When the Deceased ventured outside the gate, Monica says she heard screams and ran out. She found the Deceased lying on the ground. He was bleeding profusely from the neck. The Accused Person stood nearby with a rungu. Monica also saw a knife lying on the ground nearby.

9. James Kiplimo Kigen was another customer at Monica's chang'aa den that fateful day. He testified that he left work at 4:00pm that day and went to Monica's premises. He was drinking with his friends – Kipkurui; Tallam and James. They were told that the Accused Person and the Deceased were fighting and they went and separated them. He testified that he helped separate them and Mwangi took the Accused Person outside. However, the Accused Person returned to the general area but he sat by the roadside. Kiplimo left the chang'aa den and went home only to receive a call later that the Deceased had been stabbed.

10. William Kiplagat Chirchir was also at Monica's Chang'aa den that day. He testified as PW6. His testimony was that he was drinking

with the Deceased and others outside Monica's house on that day. At some point, the Deceased went inside the house where the Accused Person, Mwangi and others were drinking. A short while later, a fight ensued. He saw Monica escorting the Accused Person outside.

11. William testified that at around 6:45pm, he and the Deceased, who was his brother, decided to leave. William decided to stop at a posho mill to buy some flour. Just then he heard the Deceased shout "Nimedungwa!" as he ran towards him. The Deceased then fell on the ground. William says that he then saw the Accused Person running away. He testified that he saw the Accused Person throw down a kitchen knife with a plastic handle which he identified in Court.

12. On cross-examination, William insisted that he saw the Accused Person emerge from a mound of soil where he was hiding and stabbing the Deceased, then dropped the knife and ran away.

13. Inspector Anthony Kihara testified that on 31/05/2014, while at Torongo Centre, he received information from the Chief of Torongo Location that a suspect in a stabbing incident in which a person had died was in the area. He advised the Chief to apprehend the suspect. The Chief did this and took the Accused Person to the Chief's Camp. The Officer re-arrested the Accused Person and called the OCS, Eldama Ravine to come collect the Deceased.

14. Dr. Leonard Ndegwa produced the Post-Mortem Report on behalf of Dr. Dennis Odhiambo was unavailable to testify because he was doing exams. The Defence offered no objections to the production. The autopsy was conducted on 02/06/2014 at Mercy Mission Hospital. The doctor noted a penetrating stab wound and injury to the lung and cut wound on pulmonary and articular trunks causing massive haemorrhage into lung cavity. The Doctor concluded that the cause of death was cardiopulmonary arrest secondary to massive hemothorax in the left lung cavity. Dr. Ndegwa produced the Post-mortem Report as an exhibit.

15. The final witness was the investigating officer, Inspector Judith Majumbo. She got a call from PC Mwangangi who was on crime standby duties on 30/05/2014. The call came in at around 8:00pm. She was informed of a murder report at Shauri Yako village. She went to the scene. She found the Deceased had been rushed to Mercy Hospital. She proceeded there but found that the Deceased had already passed on. Upon investigations, Inspector Majumbo concluded that the Accused Person was responsible and recommended that he be charged with murder.

16. The offence of murder is defined by section 203 of the Penal Code, Cap 63, Laws of Kenya as follows:

*Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.*

17. To successfully obtain a guilty verdict in a murder charge, the Prosecution, therefore, is required to tender sufficient proof of the following three crucial ingredients:

- a. That death of the victim occurred (*actus reus*);
- b. That the death was caused by an unlawful act or omission by the Accused Person; and
- c. The unlawful act or omission was actuated by *malice aforethought*.

18. On the other hand, under section 206 of the Penal Code, *malice aforethought* is established, when there is evidence of:

- a. Intention to cause death of or grievous harm to any person whether that person is the one who actually died or not;
- b. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not;
- c. Intent to commit a felony; or
- d. Intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

19. Given the evidence adduced at the trial, there is no question that the *actus reus* is proven: the Deceased died and a Post-mortem Report to that effect was produced. The doctor testified about the post-mortem exam conducted and the cause of death.

20. Was his death caused by the unlawful act by the Accused Person? Evidence by three witnesses (Monica; William and James Kigen) places the Accused Person at the scene. All three were unanimous that there was a fight between the Accused Person and the Deceased earlier in the day; and that Monica had asked the Accused Person to leave the premises. He left; but came back. Monica heard some commotion and when she ran out she saw the Deceased lying on the ground. She did not see who stabbed him. But she saw the Accused Person at the scene. She also saw the knife. William, on the other hand, was walking with the Deceased when he stopped to buy some unga. He saw the Accused Person emerge from a mound of soil to attack his brother, the Deceased. He then heard the Deceased shout that he had been stabbed. Lastly, he saw the Accused Person dropping the knife and running away.

21. This evidence is unchallenged and remained unshaken upon cross-examination. It is as direct as any evidence one gets to support a murder charge. The witnesses were straightforward and credible. The context and circumstances all jell together. There is virtually no doubt that it is the Accused Person who stabbed the Deceased.

22. The last question to ask is whether the Accused Person had the requisite malice aforethought. The answer is resolutely in the affirmative. A person who stealthily attacks another with a knife and stabs them on the neck has at least an intention to cause grievous to the victim. That is sufficient *mens rea* for the offence of murder.

**23. It is, therefore, this Court's considered opinion that all the elements of murder have been established against the Accused Person. Consequently, I find and hold that the Accused Person, Philip Kiplagat Rono, is guilty of causing the murder of Nickson Kibiwott contrary to section 203 as read together with section 204 of the Penal Code and I hereby convict him accordingly.**

24. Orders accordingly.

**Dated and delivered in Nakuru this 4<sup>th</sup> day of October, 2018**

.....

**JOEL NGUGI**

**JUDGE**