



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL CASE NO.31 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**GILBERT KOECH.....1<sup>ST</sup> ACCUSED**

**WESLEY TUWEI.....2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused, Gilbert Koech and Wesley Tuwei, are brothers. They were charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 22<sup>nd</sup> of December 2015, at around 6.30 p.m. at Chemosogon Village, Chilchila Location within Kericho County, they murdered Wesley Cheruiyot Langat.

2. The accused pleaded not guilty to the charge and their trial commenced before the High Court. However, they subsequently offered and the state accepted a plea agreement, as a result of which the accused pleaded guilty and were convicted of the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The prosecution indicated that the accused persons were first offenders.

3. The facts of the case as presented by Learned State Counsel, Ms. Mwangi, were that the deceased was on the material day walking with his two nephews, Vincent Tirop and Eric Koech, to attend a circumcision ceremony at Lelu area. On the way, they met the two accused persons who were also headed to the same ceremony. A quarrel then ensued between the two accused persons and the deceased. The accused alleged that the deceased had been circumcised in church and not in the traditional way and was therefore not supposed to attend the traditional ceremony.

4. The second accused, Wesley Tuwei, started fighting the deceased, and the first accused then joined the fight, and he took a stone and hit the deceased on the neck. The deceased fell down and became unconscious. The two nephews of the deceased tried to administer first aid to him and later rushed him to Kericho District Hospital where he was pronounced dead on arrival.

5. On 28<sup>th</sup> December 2015, the accused persons surrendered themselves at Fort Ternan Police Station and were arrested. They were later taken on the same day for psychiatrist evaluation at the Kericho District Hospital and were both found fit to stand trial.

6. A post mortem examination of the deceased conducted at the Kericho District Hospital by Dr. Gilbert Langat established the cause of death as severe haemorrhage secondary to rupture of the left carotid artery caused by blunt trauma and asphyxia secondary to aspiration of blood. A copy of the post mortem

report on the deceased and the psychiatric evaluation of the accused was produced in evidence.

7. In mitigation, Mr. Sang, Learned Counsel for the accused, stated that the accused are remorseful and deeply sorry for the events that led to the demise of the deceased. They had undergone the Kipsigis customary cleansing rites and had re-integrated well into their society. Mr. Sang pleaded that the events had occurred while the accused were under the influence of alcohol and their only intention was to scare away the deceased. They were the sole bread winners of their families and were praying for a non-custodial sentence to enable them continue to fend for their families.

8. A social inquiry report was prepared in respect of the two accused persons. According to the report, the accused and the deceased were cousins, their fathers being brothers. The 1<sup>st</sup> accused is 22 years of age, while the 2<sup>nd</sup> accused is aged 32. Their families have reconciled, pursuant to the performance of traditional cleansing rites, and the probation officer recommends a non-custodial sentence.

9. I have considered the facts of this case and the mitigation offered by the accused persons, as well as the mitigation on their behalf by their counsel. I have noted also the contents of the social inquiry report and the fact that the two accused persons have undergone traditional cleansing rites and been forgiven by the family of the deceased.

10. That notwithstanding, it cannot escape the attention of the court that a young man has lost his life, needlessly, at the hands of the accused. He lost his life, moreover, because the accused engaged him in a fight over a subject that many might find unworthy: a fight over whether one who has undergone circumcision under a Christian rite of passage as opposed to traditional rites should have freedom to attend a circumcision ceremony. That the accused committed their act which led to the death of the deceased while under the influence of alcohol is no excuse. They have not pleaded intoxication as a defence, and they have not suggested that they did not know that what they were doing was wrong. At the end of the day, a human life was lost, and no amount of remorse or traditional reconciliation rites can bring it back.

11. In the circumstances, and while the accused have pleaded for leniency and a non-custodial sentence, I am satisfied that in the circumstances of this case a custodial sentence is merited.

12. I note that it is the 1<sup>st</sup> accused who took a large stone and hit the deceased on the neck. While the two accused persons pleaded guilty to the offence of manslaughter, in my view, the 1<sup>st</sup> accused bears greater responsibility for the death of the deceased.

13. In the circumstances, I hereby sentence the 1<sup>st</sup> accused, Gilbert Koech, to serve a term of five years imprisonment. The 2<sup>nd</sup> accused, Wesley Tuwei, shall serve a term of imprisonment for three years.

14. The accused persons have a right of appeal within fourteen days of today.

15. It is so ordered.

**Dated, Delivered and Signed at Kericho this 15<sup>th</sup> day of February 2017.**

**MUMBI NGUGI**

**JUDGE**