



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE (MURDER) NO. 3 OF 2014**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**SAMWEL KIBET KIMETO .....ACCUSED**

**J U D G M E N T**

1. The accused is charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. In that, on the 12<sup>th</sup> November, 2014 he murdered **Mercy Chebet**. The accused denied the charge and was represented by Mr. Terer. The prosecution called seven witnesses. The prosecution case is as follows.
2. The deceased **Mercy Chebet** was the accused's wife of many years. At the material time, the couple resided at a place known as Sogoo, Narok. On 12<sup>th</sup> November 2014 the accused knocked at the door of a close neighbor **Daniel Kipngeno Chelogoi** (PW1) at 3.00am requesting help to take his wife to hospital. PW1 who operated motor cycle taxi (*boda boda*) agreed to wait at the road as the accused went away to look for help to bring the wife to the road.
3. The accused was assisted by several neighbours including **Richard Kipsang Chamdai** (PW4) to carry the deceased to the road. The deceased was helped onto the motorcycle and sandwiched between PW1 and the accused as she was in a bad state. Her body was limp. She was taken to Longisa District Hospital where she was declared dead after being received at about 6.00am. On hearing the news, the accused fled and was eventually arrested at Elburgon and taken to Narok.
4. Meanwhile, the family of the deceased had been notified of the death. Two brothers **William Kipkemoi Segerger** (PW2) and **David Kimeto** (PW3) travelled to Narok. They identified the body for purposes of the post mortem conducted on 18<sup>th</sup> November 2014. Death was due to blunt trauma to the head leading to intracerebral haemorrhage and brainstem herniation which resulted in cardio-respiratory arrest.
5. In his unsworn defence statement the accused stated that 11/11/2014 he went to work on his farm returning home at 8.00pm. His wife was out and did not come home until midnight. She then retired to bed only to wake up later and start assaulting the children. When the accused got up intending to throw her out, she accidentally fell down and hit her head on the bed. Thereafter, she complained of headache after she fell down again. He organized her transfer to hospital but she was declared dead on arrival. On hearing this he decided to travel to Olunguruone to notify his relatives. He was arrested from there.
6. There are no eye witnesses to the murder of **Mercy Chebet** and the prosecution case is primarily

built upon circumstantial evidence. I say so because there is additional evidence by PW1 that the accused admitted to him by way of explanation on the material night that he had beaten his wife. There is no dispute as to the cause of death being the head injury sustained by the deceased. The court must determine whether the accused, with malice aforethought inflicted the said injuries on the deceased.

7. According to the evidence by PW1 & PW4 the accused roused the two neighbours from their sleep seeking help to escort his wife to hospital. PW1 said the accused initially informed him that the wife was “unwell” and that he had assaulted her. PW1 described the deceased as “limp” and stated that she had to be supported on the motor cycle between the two men.
8. In cross-examination PW1 reiterated that the accused admitted to have assaulted his wife. PW4 told the court that the accused while requesting his help to take his wife to the road admitted that he had injured her. These witnesses were good neighbours to whom the accused ran for help with his wife’s conditions. On the face of it they had no reason to invent false testimonies against the accused person. The accused’s explanation in his defence is that the deceased fell down and hurt herself on the head in a commotion as the accused tried to stop her from assaulting the children.
9. None of the children testified at the trial. This incident was however not put to PW1 and PW4 who asserted otherwise. It seems to be an afterthought. Besides, the explanation cannot stand in light of the evidence by **Dr. Mutai Kiplangat** (PW5). The deceased’s body not only had a frontal head injury but also other injuries on the leg (right), bruises on neck trunk and upper arm as well as a crush injury on the distal end of the left ring finger.
10. During cross-examination PW1 told the court that he had observed that two nails on the left hand of the deceased were missing. PW5 stated:

**“Given other bruises and injuries it is unlikely to have been a fall. ....a fall cannot occasion such an injury on a small part of the head. Injury from such fall would extend to a larger area not be confined to a small area as in this case. Most likely there was a struggle given the bruises on different parts of the body.”**

11. The accused claimed that the deceased wife came home at midnight in a drunken state. That may or may not be true. However, she was apparently alright, went to bed and later woke up to quarrel or beat the children, by the accused’s account. That is not the conduct of a person who has sustained severe injuries. At any rate, from his defence, the accused did not describe observing any injuries on the deceased prior to the alleged fall on the bed in the course of the scuffle.
12. From the facts of the case it does appear likely that there was a scuffle between the accused and his wife, in the night, resulting in the injuries from which she died. It is also true that the stick produced in court by the prosecution cannot be connected to the assault in the circumstances of this case. But there can be no dispute that the fatal injury was from a blunt object, and certainty not a fall.
13. This and other injuries were sustained by the deceased in her house in the period approximately close to the time when the accused roused PW1 and PW4 from their sleep to assist him take the wife to hospital. What he told the two witnesses was the cause of the injuries must be the truth and explains why upon arrival at Longisa Hospital he fled to Elburgon when the wife was declared dead on arrival. That is conduct consistent with guilt.
14. It is not necessary in proving a charge of murder for the prosecution to establish motive. In the case of **Libambula -Vs- Republic (2003) KLR 683** the Court of Appeal stated:-

**“We may pose, what is the relevance of motive here? Motive is that which makes a man do a particular act in a particular way. A motive exists for every voluntary act and is often proved by the conduct of a person. See Section 8 of Evidence Act Cap 80**

**Laws of Kenya.**

**Motive becomes an important element in the chain of presumptive proof and where the case rests on purely circumstantial evidence. Motive of course, may be drawn from the facts, though proof if it is not essential to prove a crime.** (emphasis added)

15. The defence has submitted that *mens rea* has not been proved in this case. The relevant *mens rea* in this case is malice aforethought which is defined under **Section 206** of the **Penal Code** as follows:-

**“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:-**

- a. **an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed 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, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;**
- c. **an intent to commit a felony;**
- d. **an 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.”**

16. The injuries sustained by the deceased to the head and left hand were severe in nature. There is no evidence whatsoever to suggest that the accused sustained any injuries in the incident with his wife who at any rate, is said to have come home in a drunken state. All the credible evidence therefore points to an intention to cause death or to do grievous harm to the deceased as accompanying the brutal assault by the accused.

17. In light of the foregoing, I find that the prosecution evidence is overwhelming and effectively displaces the accused's defence. I do find the accused guilty of the offence charged and will convict him accordingly.

Delivered and signed at Naivasha this **2<sup>nd</sup>** day of **June, 2015**.

In the presence of:

Court Clerk

State

Accused

Advocate for the Accused

**C. MEOLI**

**JUDGE**