



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

**Criminal Case 40 of 2006**

1. Criminal Law
  2. Murder contrary to Section 203 as read with Section 204  
Particulars of offence;  
On 25<sup>th</sup> November 2006 at Ririk village in Bureti District of Rift Valley Province murdered David Yegon.  
Plea Not guilty (5<sup>th</sup> March 2007 Musinga J.).
    - (a) Trial began with assessors Musinga J, heard one witness (10<sup>th</sup> March 2007).
    - (b) Trial court before G.B.M. Kariuki J. Heard two witness (25<sup>th</sup> June 2008).
    - (c) De novo hearing Ang'awa J, (13<sup>th</sup> July 2009).
  3. Prosecution case.
    - (i) Assault by accused of deceased with hammer
    - (ii) Deceased rushed to hospital and still alive.
    - (iii) Deceased died 2 -3 hours later.
    - (iv) PW3, 4 & 5 to hospital.
    - (v) Chief reported assault accused warned not to go home.
    - (vi) Charged with murder
    - (vii) Offered plea of manslaughter – rejected by prosecution.
  4. Defence;
    - (i) Initiate party.
    - (ii) was informed not to go home.
  5. Held;  
Guilty for murder.
  6. Case law.
  7. advocate;
    - T. M. Nyaingiri Advocate instructed by the firm of M/S T. M. Nyaingiri & Co. Advocates for the accused.
    - P. Kiprop State Counsel instructed by the Attorney General for the State
- REPUBLIC.....PROSECUTOR
- VERSUS
- GEOFFREY CHERUIYOT CHIRCHIR.....ACCUSED

**JUDGEMENT**

**I. Procedure**

1. Geoffrey Cheruiyot Chirchir is charged with the offence of **murder** contrary to **Section 203** as read with **Section 204**.
2. The particulars of offence being that on the 25<sup>th</sup> day of November 2006 at Ririk village in Bureti District of the Rift Valley Province murdered David Yegon.
3. This information was dated 13<sup>th</sup> December 2006. A plea was taken on 5<sup>th</sup> March 2007 before Musinga J. A plea for manslaughter was rejected by the State. The hearing commenced before the Hon. Judge and one witness heard. There was no further hearing until 25<sup>th</sup> June 2008 when the new Resident Judge Kariuki J, heard a further witness PW2.
4. On 13<sup>th</sup> July 2009 the trial commenced De novo before this court with evidence given before disregarded.

**II. Information – Background Facts.**

- 5. It was a time of initiation ceremony. On the 24<sup>th</sup> November 2006 screams were heard coming from where David Yegon (*now deceased*) was when PW2, PW3, PW4 & PW5 arrived at the scene they found David Yegon lying down. There was blood, a hammer and a coat.
  
- 6. PW4 & PW5 and others rushed David Yegon to the hospital. After 2-3 hours he passed away.
- 7. PW6, the chief arrived at the scene and found that a fight had broken out whereby David Yegon was inflicted with injury. The suspect Geoffrey Cheruiyot Chirchir was allegedly reported with the offence of assault. The deceased having died he was charged with murder.
  
- 8. The medical doctor who conducted the post-mortem PW11 confirmed the injuries afflicted were multiple injuries to the scalp with a blunt object.
  
- 9. In his defence the accused stated that it was a time of initiations. That he came and was advised not to go to his home as it was not safe to do so.

**III. Findings**

- 10. The accused herein was preferred to the offence of murder. This case has delayed in its hearing for about two years. At the time PW3 was a minor. By the time the trial was heard the witnesses were adults.
  
- 11. Under **Section 206** of the **Penal Code**, there must be malice aforethought before one may be convicted of an offence.  
**Section 206 (a)** reads  
*“malice aforethought shall be derived 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) .....*
  - (c) .....*
  - (d) .....*”
  
- 12. The accused person was initially detained for assault on the deceased person. This injuries inflicted were so grievous that it amounted to the loss of the deceased’s life.
  
- 13. The accused went to the chief’s for shelter.
  
- 14. I am of the opinion that the deceased was found having been inflicted injuries and members of public who were around namely PW3, PW4, PW5 found him injured and took him to hospital.
  
- 15. I am of the opinion that the circumstantial evidence including the detention of the accused on a charge of assault upon the accused that later led to the deceased’s death accordingly point to and establishes that the accused did commit the said offence.
  
- 16. I find him guilty as charged.

**Dated this 8<sup>th</sup> day of October 2009 at Kericho.**

**M. A. ANG’AWA**

**JUDGE**

**Advocates**

- T. M. Nyaingiri Advocate instructed by the firm of M/S T. M. Nyaingiri & Co. Advocates for the accused.
- P. Kiprop State Counsel instructed by the Attorney General for the State.