

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Case 13 of 2003

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH KIPKEMOI CHERUIYOTACCUSED

RULING

JOSEPH KIPKEMOI CHERUIYOT, the accused in this case is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge are that on 17th February, 2002 at Ndoinet Farm Kuresoi in Nakuru District of Rift Valley Province, jointly with another not before court he murdered **ELPHINA CHEPKINYOR CHEBIWOT**.

The prosecution case is that at about 8.00 pm, as the deceased and PW3 walked home from a circumcision ceremony, the accused and one Peter Cheruiyot waylaid them and killed the deceased. Of the six prosecution witnesses who testified, no one saw the accused kill the deceased. The only evidence that comes near implicating the accused is that of Samuel Kipyegon Chirchir, PW4, who testified that on the material date at about 9.00 pm as he walked home from Kwa Sero Trading Centre, he reached the deceased who was walking with Eunice Chepkemoui Tuwei, PW3. After a short while he met the accused. He was alone. Then he heard accused tell PW3 not to pass near him. PW3 then called him to say that accused was stopping her. When he went back he did not see accused. She asked him to go back with her to look for the deceased. As they did so they met the deceased comfortably walking with the said Peter Cheruiyot. As there was nothing a miss with them, they went away. After reaching home and staying for about 30 minutes, he heard screams from the home of David Akoi. He rushed there as many other people did. Accused got there after him. They found the body of the deceased lying outside that David Akoi's home. Thereafter the matter was reported and the police went there and arrested accused and three other people.

As is clear from the evidence of PW2 &3, accused was arrested because he used to be with the said Peter Cheruiyot and he had been seen with him earlier that day. When the two witnesses went to the home of Peter, they found him asleep. They recovered a blood stained sword from under his pillow and his jacket had fresh blood on it. He was among the four people they arrested but he mysteriously disappeared from Molo Police Station and has not been traced since.

It is clear from this evidence that no prima facie case has been made out against the accused to require him to defend himself. Besides this the death of the deceased has not been established as no pathologist who conducted the autopsy if at all one was conducted or the people who identified the body testified. In the circumstance I find and hold that accused has no case to answer and I accordingly acquit him under **Section 306** of the **Criminal Procedure Code**. He shall be set free forthwith unless otherwise lawfully held.

DATED and delivered this 8th day of October, 2009.

D.K. MARAGA

JUDGE.