



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. E017 OF 2021

REPUBLIC.....PROSECUTION
VERSUS
VICTOR KIPROP RUTO..... ACCUSED

JUDGMENT

1. The accused **VICTOR KIPROP RUTO** was charged with the offence of **murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge were that on **5th day of April 2021 at around 2230Hrs at three ways bar at Kipsaraman Trading centre, Kipsaraman Division, in Baringo North subcounty within Baringo county accused murdered one REUBEN KEMEI CHERUTOI alias Lobon.**
2. The accused pleaded **denied the charge**, and the matter proceeded to full trial with the prosecution availing 8 witnesses and on accused being placed on his defence, he gave sworn statement and did not called witness.

PROSECUTION'S CASE

3. PW1 Joseph Chemtoi who is a clinical officer testified that on 13/4/2021, he was on night duty when his brother Reuben Cherutoi's wife called him informing him that her husband had been stabbed in the club after a police officer disagreed with him. He said he asked her to take him to hospital and later she informed him that his brother was not breathing. He came to see the body and found that police had taken it to Kabarnet mortuary. He identified the body for postmortem.

4. Pw2 Jeniffer Ruto who worked in the bar testified that on 5/4/2021, she was in the house with her husband at 10 a.m. then he went to prepare goat head and soup in the bar. She said at noon, she went to the bar and found her husband in the kitchen. She said she also found Vincent Cherutoi in the counter and Betty Indusa who was a waitress. She said after lunch, she went to the house up to 6pm then went to the bar and found customers drinking. She said she assisted her husband in the kitchen and went with him to the bar at 10pm. she said 3 police officers from Bartabo police station entered the bar being Ruto, Peter and others. She said she was seated with her husband drinking soda and that Ruto greeted her and told her he wanted to pay debt of kshs 1200; and said that he was to pay kshs 650 and pay the balance later. She said after paying, he went to the counter

to get balozi drink and paid kshs 600 and then asked for more but she told him they were finished and asked him if he could buy tusker but he refused. She said there was a neighbor Silas selling senator cake. He said he brought to the buy and bought more when he finished and the seller asked Ruto for money and then Silas went to tell her husband that Ruto had refused to pay and her husband got annoyed and fought with Ruto.

5. Pw1 said she went to separate them and removed a pump for senator cake and went to call Ruto's colleague peter as the two fought moving outside to where senator cake was being sold. She said peter removed all from the club and in the process, she flushed a torch on her husband and realized, he was bleeding. She said her husband fell down as he fought with Ruto and he was bleeding from the right shoulder. She said Ruto boarded a vehicle with his colleague and left. She said her husband was taken to Marube clinic but they found it closed; they called the doctor but by the time he arrived, her husband had died. She said they covered her husband's body with a Maasai sheet which she identified in court...She called police who arrived and collected the body. She said her husband the deceased herein was not drunk. She identified Ruto as accused herein and said the accused stabbed the deceased with a knife which was not recovered.

6. On cross examination pw2 said she was the owner of the bar and she supervised the work in the bar together with her husband and the counter man was Vincent Cherutoi and that accused was her regular customer and that she had no relationship with the accused. She said she jointly owned the bar with her husband the deceased herein. She said the deceased was annoyed because accused had not paid a debt of kshs 1200 and he went to where they were drinking senator cake. She said she saw accused having keyholder which had a penknife but she did not see accused open the knife nor stab the deceased. She further said the people separating accused and deceased did not say they saw accused stab the deceased.
7. Pw3 Vincent Cheruiyot testified that on 5/4/2018, he was on duty in a bar owned by the deceased at Kipsaraman and at 10 p.m,3 people arrived and asked for Balozi drinks. He said Betty served them and they wanted more but they were finished and they went to the next room. He said he knew 2 of the being Ruto who is accused herein and Peter. He said after about 15 to 30 minutes, he heard noise. He closed the counter and went out where he found accused holding each other with accused while the deceased was asking accused to pay the bill and shortly, he saw the deceased down and was bleeding. He said they took him to Marube clinic and

shortly after 30 minutes, they were informed that he had died.

8. Pw4 Betty Ingusa confirmed that she was employed by pw1 and on 5/4/2021, he was on duty when 3 people who included accused entered the bar and ordered Balozzi drink. She said they needed more Balozzi drink but she had exhausted and one called Silas sold them vuta pumzi. She said shortly thereafter she heard struggle outside and then she was told she was staying inside while her employer had been killed. She said she saw the person who killed him after the incident. She said there was security lights outside and that she saw accused enter the vehicle and left. On cross examination, she said accused owed the deceased kshs450/= and that they quarreled over the money. On reexamination she said no one else quarreled with the deceased.
9. Pw5 Shalin Chepyegon testified that on 5/4/2021, she was drinking at Westgate club owned by pw2 when at around 9 p.m,3 police officers known to her arrived and asked for Balozzi drink. She said she knew two of them being accused and Peter. She said they drunk and asked for more and they were asked to pay a debt; then they went outside and while outside, while they were outside and she also went outside with peter and while outside, she heard noise. She said the

deceased was asking the accused to pay a debt and the deceased was holding vuta pumzi pump and he struggled with the accused and in the process accused hit the bulb. She said accused and deceased fought and pw2 called peter to help. She said they fought inside as they went outside. She said she saw accused remove a knife and stab the deceased. She said she took a shawl which pw2 had and used it to prevent blood flowing from deceased's body. She went to call Vincent pw3 and they took the deceased to Marube hospital. She said the doctor delayed in arriving and found deceased dead. On cross examination, pw5 said the deceased held accused and asked him to pay debt and that accused had a knife in his hand put together with his car keys. she said the pump deceased hit the bulb and it became dark then they moved outside but she had gone outside with peter before then. She said when they heard noise, they looked through the window when the bulb was still on.

10. Pw6 no.213042CPLJohn Kiboywa testified that on 5/4/2021, he was on patrol at Kipsaraman police station at 1.50 p.m. when they received a call from pw2 who informed him of an incident in her bar. They went there but didn't find anyone at the bar. They followed blood drops up to a clinic where they found a person covered with Maasai shawl. They

called police at Kabartonjo who went to the scene and collected the body.

11. Pw7 Dr. Mwangi Oscar conducted postmortem on the body of the deceased and found that the deceased died due to left massive hematoma due to penetrating stab wound on the left chest.

12. Pw8 no.69029 CPL Benard Asirikwa testified that on 6/2/2021, he was at Kabarnet received a call from DCIO instructing him to go to Kabartonjo to join OCPD Kabartonjo and critical infrastructure police unit (CIPU) and proceed to a murder scene at Kipsaraman. He said they arrived at the scene at 6 a.m. and found a body covered with Maasai shawl. He said they inquired from deceased's wife what happened what and they learnt that the deceased had been stabbed by a police officer. He said the scene was photographed and he drew sketch plan and they went back to police station and found the suspect victor Ruto had reported the incident. He said in his report, the accused stated that he had been harassed by the decease and the deceased had attacked him on allegation that he was a friend to his wife known to the deceased's wife. He said he interviewed one police officer Evans Kipruto who told him accused had issues with the deceased while the bother

officers who were with accused said accused had no issue with the deceased. Accused was later handed over to him at the office of subcounty police commander. He requested for time to complete investigate and upon completing investing, accused was charged with the present offence. He produced photographs, exhibit memo and certificate in court as exhibits.

13. PW8 NO.69029 who was DCI at Baringo county at the material time testified that accused stated that he went to the bar co-owned by deceased and accused and he paid kshs 650 debt and kshs 600 for the drinks of the material day and as he was leaving the bar, the deceased demanded that he pays the balance of the debt and when he refused to pay, the deceased threw a battle at him. He said after completing investigations, he handed over the file to ODPP with recommendation that accused be charged with murder.

DEFENCE

14. Upon being placed on his defence, the accused opted to give sworn testimony and did not avail a witness. He testified that he is a police officer stationed at Bartabo police post and that on 5/4 2021, at around 10.30 p.m., he went to join two colleagues Kennedy Kibet who is deceased and Evan Cheruiyot at Kipsaraman using his motor vehicle Probox registration number KCF411J. He said at 11.30 p.m. they went to three ways bar which belonged to pw2.He said he

owed the bar ksh1200.He said he went to where pw2 to give her kshs 600 and pw2 told him to greet her husband whom he had not seen before after which he went to meet his colleagues said his colleagues asked him to buy them alcohol and he told them he didn't have money but sent them kshs 600 and asked them to add. He said he then went out and bought alcohol called vuta Pumzi from a man called Silas who was selling in a small bar outside. He said Silas also gave his colleagues vuta pumzi. He said after that pw2 asked him why he was not greeting her husband and then he greeted pw2's husband and left. He said his colleague peter followed him and he did not realize pw2's husband was in their midst. He said the deceased got of him by his color and said he was seducing his wife pw2.Accused said he told the deceased that he was not seducing his wife and that he did not know he was pw2's husband. He said a motor rider who was there asked the deceased to leave him alone but the deceased continued pulling him and your motor rider intervned and the deceased left him and fell down. He said shortly, he heard stones being thrown on the roof. He said pw2 started screaming saying "Ruto has killed my husband the deceased. Accused said he does not know what made the deceased fall and that she saw pw2 lay on top of her husband while screaming saying "Ruto you have killed my husband".

15. Accused said he went to the vehicle and found Evans Cherutich who told him someone said the man had been stabbed. He said he went to Kabartonjo police station and recorded what happened. He said a colleague one Millicent called him and told him that it has been said he had killed. He said he went back to police station and he was taken to OCPD's office. He said he took himself to police. He denied having a knife in his keyholder. He said he had not met the deceased before the incident. He said his vehicle was checked after the incident and it did not have blood. He said he used to carry his keys on his hand and that there was no weapon recovered from him. In cross examination, he said after paying his debt in the bar, he greeted the deceased after being introduced by his wife Pw2 and then the deceased said he had heard so much about him and his wife while holding a bottle. He said deceased did not injure him as members of public helped him. He said there were about 40 people in the bar and none testified in court. He admitted that he saw the deceased fall down and the people who helped are the motor riders and watchman who were outside. He said the watchman did not testify in court. He said he was not happy with the deceased following him and asking questions.
16. On reexamination the accused said the deceased raised a bottle with one hand as he held accused by color while

saying "I have heard so much about you and my wife. Accused said he has not availed the young man who rescued him because he was told he should not step in Kabartonjo and his colleague Kibet who went to his vehicle is now deceased. He said in his view, it is boda boda rider who stabbed the deceased as it was at night and it was not possible to tell who had which weapon.

ANALYSIS AND DETERMINATION

17. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. For the prosecution to secure a conviction for murder, it must prove beyond reasonable doubt the following ingredients:-

(i) Whether the deceased died;

(ii) Whether his death was caused by an unlawful act or omission of the accused; and

(iii) That the accused had malice aforethought as defined under Section 206 of the Penal Code.

(i)Whether the deceased died

18. The fact of death is not in dispute. PW1 and PW7 confirmed that the deceased, **Reuben Kemei Cherutoi alias Lobon**, died on 5th April 2021. The post-mortem

examination conducted by Dr. Mwangi (PW7) established that the deceased died of a **massive left hematoma due to a penetrating stab wound on the left chest**. The cause of death was therefore clearly established.

(ii) Whether his death was caused by an unlawful act or omission of the accused

19. On the second ingredient, the evidence of PW2, PW3, PW4 and PW5 consistently placed the accused at the scene of the incident. PW2, the deceased's wife, testified that a quarrel arose between the deceased and the accused over payment of a debt at their bar. She stated that the deceased and the accused fought, and in the course of the struggle, she noticed that her husband was bleeding from the shoulder. PW3 and PW5 corroborated this account, confirming that there was a fight between the accused and the deceased and that soon thereafter, the deceased was seen bleeding. PW5 in particular testified that she saw the accused remove a knife and stab the deceased during the scuffle.
20. Although the knife allegedly used in the incident was never recovered, the fact of a stab wound was conclusively proved by the post-mortem report. The accused himself admitted that he was involved in a physical altercation with the deceased that night. He confirmed that the deceased

held him by the collar and accused him of having an affair with his wife (PW2). He further admitted that there was a struggle between them, during which the deceased fell down and shortly thereafter, it was reported that he had been stabbed. This admission places the accused squarely within the chain of events that resulted in the fatal injury.

21. Having reviewed the entire evidence, I am satisfied that it was the accused's unlawful act during the scuffle that caused the deceased's death.

(iii) whether accused had malice aforethought

22. Section 206 of the Penal Code defines malice aforethought to include intention to cause death or grievous harm, or knowledge that death or grievous harm would probably result from one's act. In assessing whether malice aforethought existed, the court must examine the circumstances of the attack, the nature of the weapon used, the conduct of the accused before and after the incident, and whether there was provocation or a sudden fight.

23. In the present case, the evidence shows that the altercation was spontaneous, arising from a quarrel over an unpaid debt and possibly aggravated by accusations of infidelity. There is no evidence that the accused armed

himself in advance or went to the bar with the intention to harm the deceased. The fight appears to have been mutual, and the fatal injury occurred in the course of a heated scuffle between the two. The prosecution evidence does not demonstrate any premeditation or deliberate design to kill.

24. While the accused's conduct in using a knife during the quarrel was reckless and unlawful, it was not accompanied by the necessary mental element of malice aforethought. In such circumstances, the law distinguishes between murder and manslaughter. Section 202 of the Penal Code defines manslaughter as causing death by an unlawful act or omission that does not amount to murder.

25. The Court of Appeal in *Nzuki v Republic [1993] KLR 171* held that where the accused had no intention to cause death or grievous harm, and the death occurred in a sudden fight or without premeditation, the offence proved is manslaughter and not murder. Similarly, in *Republic v Tubere s/o Ochen (1945) 12 EACA 63*, the court emphasized that intention must be inferred from the circumstances and conduct of the accused.

26. Applying those principles to this case, I find that the accused and the deceased engaged in a sudden fight triggered by a trivial misunderstanding. The accused acted

in the heat of the moment without premeditation. The single stab wound inflicted during that scuffle, though fatal, does not exhibit the intention to kill required for a murder conviction.

27. I therefore find that the prosecution has failed to prove the element of malice aforethought beyond reasonable doubt. However, the evidence establishes that the accused unlawfully caused the death of the deceased. The appropriate finding in the circumstances is that the accused is **guilty of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.**

28. **FINAL ORDERS:** -

- a) Accused is hereby found guilty and convicted of the offence of manslaughter contrary to section 202 as read with section 205 of the penal code.
- b) Right of appeal 14 days.

Judgment delivered, dated and signed Virtually at Kabarnet this **15th Day of October, 2025.**



.....
RACHEL NGETICH

JUDGE

In the presence of:

- Ms. Bartilol for State.
- Accused Present
- Mr. Kiptoo counsel for Accused
- CA Momanyi.

ORIGINAL