

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. 9 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY KIPROTICH CHIRCHIR.....
ACCUSED

JUDGMENT

1. ***Geoffrey Kiprotich Chirchir*** the Accused Person in this case underwent trial for the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence are that on 30th day of March, 2017 at around 1800 hours at Poiywek Village, Ainamoi Location, Kericho Sub-County within Kericho County, murdered Diana Chepkorir.
3. The prosecution tendered the evidence of Fifteen (15) witnesses in supporting its case against the Accused.
4. ***Vincent Kimutai Kemei (PW.3)*** stated that on the material day he was at home grazing cattle when he heard screams nearby, upon arriving at the scene he found the deceased who was bleeding profusely and had several cut

wounds. Pw. 3 stated that he saw the accused flee and hide himself in a nearby bush.

5. **Michael Kiptarus Langat (PW.4)** testified that no one was arrested on the material day but on the following day the accused surrendered himself to the law enforcement officers.

6. **Cleophas Kipkemoi Tarus (PW.5)** testified that he attended the autopsy of the deceased, they identified the body of the deceased and the doctor told them that she died from cut wounds with a *panga*. Pw. 5 testified that the accused was arrested in connection with the death of the victim who was his sister.

7. **Fredrick Kipkoech Chirchir (PW.6)** testified that he accompanied the accused to surrender himself to the law enforcement officers and after they recorded his statement he was escorted to the cells.

8. **Josephine Maiyo, (PW. 7)** testified that on the material day she heard the victim screaming saying “Geoffrey, please forgive me.” and that upon arriving at the scene, they found the victim had succumbed having been cut with a *panga*.

Pw. 7 stated that the accused had fled from the scene and that the *panga* used to assault the victim was recovered by the roadside.

9. **Chepngetich Sigira (PW. 10)** testified that on the material day, the accused asked her to store his *panga* and that he collected his *panga* on the same day and she later learnt that the accused had assaulted the victim with the *panga*.
10. **Gerald Kemei (PW. 11)** testified that on the material day, he saw the accused assault the victim and that the accused fled from the scene and that a *panga* was recovered at the scene.
11. **C.I.P, Madina Abdalla (PW. 12)** a law enforcement officer received a report concerning a murder incident. Pw. 12 testified that they proceeded to the crime scene, the crime scene processed and the body was taken to the morgue for preservation. He testified that the *panga* was recovered and that the accused surrendered himself at Ainamoi Police Station.
12. **Cpl. Titus Muriuki Rukunga (PW. 13)** a forensic crime scene investigator, he testified that he documented

the crime scene and he produced the photographs and certificate.

13. **Dr. Wesley Rotich (PW. 14)** a medical officer stated that he conducted an autopsy on the deceased and formed the opinion that the cause of death was severe head injury, spinal cord injury and massive blood loss due to multiple cut injuries caused by multiple cuts and he produced the post mortem report.

14. **Richard Kimutai Lang'at (PW.15)** a government chemist testified that he conducted a DNA analysis on the *panga* recovered on the scene and blood samples of the victim and the accused, his findings were that the *panga* matched with the blood sample of the deceased whereas the *panga* did not have any genetic relationship with the accused and he produced a report with his findings to the court.

15. At the close of the Prosecution's Case, the Accused was placed on his defence. The Accused, **Geoffrey Kiprotich Chirchir (DW.1)** gave sworn testimony. DW.1 stated that on 30th March, 2017, at around 5.00 a.m., he

went to milk his cows while Diana Chepkorir, deceased went to light the fire.

16. **DW.1** stated that after milking the cows, he gave the milk to the deceased to take the same to be weighed in local centre. He further stated that the deceased came back and told him that she had lost and wanted to go and purchase. DW.1 said he together with the deceased boarded a boda boda to a bookshop where they purchased physics book 1, Biology book 2 and Maths book 1. DW.1 said that they came back using the same boda boda and left the deceased at the junction to go to school as he himself proceeded home.
17. **DW.1** said that in the evening at around 5:30 pm, he left for home and on the way, he met Diana Chepkorir walking and he questioned her as to why she was walking yet he had paid the boda boda rider. It is his evidence that Diana informed him that the boda boda rider had switched off his mobile phone. DW.1 said he requested her to go with him but she insisted on visiting her home to pass greetings. DW.1 claimed he decided to beat her to cajole her to listen to him. DW.1 said he then left to sleep and was woken up at

11:00 pm by Fredrick Chirchir who informed him that he made a mistake by assaulting Diana using a panga. He claimed he was drunk. He said that when he discovered that he made a mistake, he surrendered himself to the police.

18. Basically, it is the Accused's defence that he had earlier on the day used a panga to do a fencing job he had been hired for. Though the Accused was not explicit, its apparent that from his evidence, he invoked the defence of intoxication.

19. In order to establish the offence of Murder, two elements must obtain. First, is actus reus and Secondly, malice aforethought. As regards to the first element of actus reus, there is no doubt that the Accused assaulted the deceased using a panga thus causing her death.

20. The evidence of PW.3 is very crucial in this case. PW.3 told this Court that on the material day, he was at home grazing his cattle when he heard screams nearby. He said he rushed to where the screams emanated and found the deceased lying down while profusely bleeding. It is the evidence of PW.3 that he observed and found that the

deceased suffered multiple cut wounds. PW.3 said that he saw the Accused flee the scene to hide in a nearby bush.

21. **PW.7** stated that he heard the victim screaming and pleading with Geoffrey to forgive her. PW.7 said he rushed to the scene and found the deceased had succumbed to her injuries having been cut with a panga which was later recovered by the roadside.

22. **PW.11** said he personally witnessed the Accused assault the deceased before fleeing the scene.

23. The second ingredient which is necessary to establish the offence of Murder is that there must be malice aforethought. Section 206 of the Penal Code provides the scenario to establish malice aforethought as follows:-

“Section 206 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 cause 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.

24. In this case, it is not in dispute that the Accused assaulted the deceased using a panga. The panga was examined by the Government Chemist and found to have blood stains that matched the blood sample of the deceased. The Accused has raised the defence of intoxication. This court is not convinced by the Accused's assertion that he was intoxicated. There is no iota of evidence showing that the Accused was drunk at the material day. I find his defence to be an afterthought.

25. ***Dr. Wesley Rotich (PW.14)*** testified before this court stating that he conducted the postmortem on the deceased's body and formed the opinion that the cause of death was

severe head injury, spinal cord injury and massive blood loss due to multiple cut injuries.

26. The Postmortem report produced in Court indicates that the deceased suffered the following injuries:-

Head:-1) Deep cut wound occipital region.

2) Deep cut wound left temporal region.

3) Deep cut wound forehead with fracture of frontal bone

4) Deep cut wound left side of the face

with

fracture of the left mandible

5) Conjunctival pallor.

Neck: 1) Posterior aspect.

Deep cut wound, spinal column, fractures and cut spinal cord.

2) Left side of the neck - Deep cut wound with

cut common carotid artery and jugular veins.

Back: (i) Deep cut wound with fracture left scapula.

(ii) Deep cut wounds.

Upper Limbs:- 1) Deep cut wound posterior aspect

of left arm.

aspect

2) Deep cut wound anterior

left arm.

aspect

3) Deep cut wound, posterior

Of left elbow with humeral fracture.

- 4) **Deep cut wound on right hand.**
- 5) **Right hand cut away from the wrist.**

27. It is clear to this Court that the Accused Person used a panga lethal weapon to assault the deceased with the intention of causing **death** or **grievous harm**. It is apparent that the injuries inflicted upon the deceased were grievous. There were a total of 15 deep cut wounds. The panga used was very sharp and the deceased had no chance of survival.

28. In the circumstance, the Accused is deemed to have had malice aforethought under Section 206 (a) of the Penal Code.

29. In the end, the sum total of evidence is that the prosecution presented credible evidence to prove the case against the Accused beyond reasonable doubt. Consequently, **Geoffrey Kiprotich Chirchir** is hereby found guilty and is convicted for the offence of Murder.

Dated, signed and delivered at Kericho this 2nd day of October, 2025.

.....
J. K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Prosecutor - Maundu

Accused - Present in Person

Morara holding brief for Miss Kirui for the Accused.