

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. E054 OF 2021

REPUBLIC.....PROSECUTOR

- V E R S U S -

ERICK KIBET NGENO.....1ST
ACCUSED

NICHOLAS KIPKOECH NGENO.....2ND
ACCUSED

JUDGMENT

1. ***Erick Kibet Ngeno, and Nicholas Kipkoech Ngeno*** being the 1st and 2nd Accused Persons ae before this court on trial on the information of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The 1st Accused, executed a plea agreement whereof he pleaded guilty to the lesser charge of Manslaughter and he is not awaiting sentencing. The 2nd Accused when placed on his defence opted to keep quiet and urged this court to give its Judgment.
3. The Prosecution summoned eight (8) witnesses who testified in support of its case.
4. Samson Kipketer Kositany (PW.1) told this Court that on 9/9/2021, he was with the deceased resing along the road

and that they had gone to have a drink of changaa at a neighbour's house. PW.1 said that on the way, two accosted the deceased and one Daisy. PW.1 stated that the deceased called him and told him those people were killing him. PW.1 stated that he did not identify the people who assaulted the deceased and Daisy.

5. Jackline Chepkurui Korir (PW.2) said that the deceased was her husband. PW.2 said that on 7/9/2021, the deceased beat her up and locked her in her house. She said that she managed to get out of her house after the window and left for her parents on 9/9/2021. She said that she reported to her brothers (Accused) that her husband (deceased) had beaten her. PW.2 said on 9/9/2021, the deceased threatened to pull down her house. She said she screamed prompting Erick (1st Accused) and Nocholas (2nd Accused) to rush to PW.2's house.

6. PW.2 said the deceased and Daisy were told to leave. It is said the deceased held the 1st Accused and heard him protesting why the deceased was holding him. PW.2, the deceased and the 1st Accused started fighting and ran

towards the nearby road. PW.2 said the deceased is the one who started the fight.

7. In Cross-Examination, PW.2 said she did not know who hit the deceased. PW.2 said that her brothers (Accused) beat the deceased. She further stated that the 2d Accused was beating one Daisy.

8. Patrick Cheruiyot Yegon (PW.3) stated that on 9/9/2021 said he saw the 1st and 2nd Accused assault the deceased.

9. In Cross-examination, PW.3 said he was told the accused persons assaulted the deceased. He confirmed that he did not witness the accused persons assault the deceased.

10. Bernard Kipkirui Korir (PW.4) said that he was told by Ronald that the accused persons assaulted the deceased. He was categorical that he did not see the accused person assault the deceased.

11. Having considered the evidence, it is clear that the 2nd accused is placed at the scene of crim. It is clear from the

evidence of PW.2 that both accused persons who are her brothers fought the deceased. The duo, (1st and 2nd accuseds) had gone to fight the deceased to revenge for the deceased assaulting their sister (PW.2). It would also appear that it is the deceased who started the fight while drunk. It is clear from the evidence that it is the injuries inflicted by the accused persons which caused the death of the deceased.

12. However, the element of malice aforethought was not established. Therefore the offence of murder was not proved. However, the evidence indicates that the offence of manslaughter was proved against the 2nd accused.

13. This Court proceeds to instead convict the 2nd accused for offence of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.

**Dated, signed and delivered at Kericho this 26th day
of November, 2025.**

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Prosecutor - Maundu

Accused - Present in Person

Kirui for 1st Accused

Mitey for the 2nd Accused