



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET  
CRIMINAL CASE NO. 27 OF 2023

REPUBLIC ..... PROSECUTION  
VERSUS  
CHEPKURGAT CHERUIYOT ..... ACCUSED

JUDGMENT

1. The accused **CHEPKURGAT CHERUIYOT** 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 the 2<sup>nd</sup> day of September ,2022 at unknown time at Mugurin village, Mogotio subcounty within Baringo county the accused murdered Nicholas Kibet.
2. The prosecution availed 8 witnesses to prove their case and upon the accused being found to have a case to answer, he gave sworn statement and availed two witness.

**PROSECUTION'S CASE**

3. Pw1 Nancy cherop chebii testified that on 2.9.2022 at midnight they received a call informing them that her child the deceased herein. Who had gotten lost two days before had been found at

Mogotio. She said the deceased went ate in a hotel at Mogotio and he did not have money. She said someone found the child at mogotion junction and took him to his home. She a motor rider one Hillary went to their home in the morning and took her husband who is accused herein and her brother in law and took the child home at 2 p.m. using Kadafi's vehicle. She said the deceased had stolen Hillary's money and left and that he was to show them where the money was and that the place was not far from home but she did not accompany them. She said they did not get the money and they returned without the child.

4. Pw1 said she asked accused where the deceased was and he said he was with the other children. She went to check and found that he had been beaten and he had injuries; that he was in a bad condition. She said she returned home and informed them and her husband went to ring the child but he was in a bad condition. She said she felt bad over the child's condition and went to a neighbor's house. she returned at 6 p.m. and found that the child was still alive but he could not eat. She said the child died in the house. She said the area chief was informed and that she left when the child died.
5. On cross examination, she said she did not see anyone beating the deceased and that she still lives with the accused.
6. Pw2 Cheruiyot Komen a grand father of the deceased testified that he was present at home when the deceased died and that prior to his death, he had gotten lost for 3 days. He said

someone called accused at midnight informing him that the deceased was surrounded by many people at kambi ya moto and he could be killed and when he woke up, he was told the accused had gone to collect the child and he was present with his wife when the child was returned home at around 4 p.m. He said he went with his wife to see the child and the child was in bad condition. He said he advised them to take the child to hospital but he was not taken. He said the child was very sick and he died the same day.

7. On cross examination, he said he was told by the chief that the child was surrounded by people and he was beaten. He said the accused went for the deceased at midnight and at the time the child arrived home, he had been beaten and that he was already sick when he arrived home. He said the accused had gone to rescue him and that the deceased had stolen from someone's house. He said he did not see the deceased being beaten and that he was beaten by people at kambi ya moto.
8. On reexamination, he said he did not see the people who beat the deceased. And when he went to see the child, he found him in a bad condition.
9. Pw3 Samuel Kiplagat who is the area senior chief Simotwet testified that on 2.9.2022 at 10 pm, he received a call from a watch at mugurin secondary school informing him that a child from his location had been found stranded at Eldama Ravine junction; and the person gave him a number which he recognized as for one Kadafi and said kadafi was with the

child. He said he asked kadafi to give the child shelter as it was at night and the next day he traced the family of the child and connected to kadafi. He said he learnt that the father of the child was Chepkurgat Cheruiyot and he knew him. He said he talked to chepkurgat's brother called Simon and he said they would go for the child. He said the next day at midnight chepkurgat and his brother simon woke him and informed him the child they had gone to collect had died at home. He said on asking them if he could call police, they said they had no complaint since the child had fallen sick and they asked for a letter to take the child to the mortuary. Pw3 gave them a letter dated 3.9.2022 and the child was taken to the mortuary. He showed court the letter. He said on 2.9.2022, he learnt that the child did not die of natural cause. He informed OCS and asked the family to go to police. On 8.9.2022, he was called by DCI Mogotion and he recorded statement.

10. Pw4 Kadafi Cheruiyot testified that on 1.9.2022 at 10 p.m, he was heading home from mogotio when at Eldama Ravine junction, he met a boy and he was told he had eaten in a hotel and failed to pay. He said he asked the crowd to leave and asked him home then when he told him his home is Mugurin, he called a teacher at mugurin primary school and then called the area chief who informed him they were looking for the deceased because he had stolen kshs 6000. He said he asked the deceased to sleep in his house and that the deceased was not injured. He said at 6a.m one Hilary called asking for the

deceased and arrived at his house at 8 a.m. together with accused and accused's brother Simon.

11. Pw4 said the deceased admitted that he had stolen kshs 6000 from Hillary and that he had spent kshs 200. Pw4 further stated that the deceased had a camera and a key and that he gave pw4 the camera which he gave Hillary. He said Hillary had a list of things stolen and the deceased said he had left the money at home. pw4 decided to personally take the deceased home. He further stated that no one beat the deceased at his home. He said he took the deceased to his home using his vehicle and on arrival home he found the deceased's grandfather and grandmother. He said he called the chief pw3 and informed him that he had taken the deceased safely home. pw4 said he waited for the deceased's mother to arrive. He added that the deceased said he had hidden the money under a stone but they did not find it. He left the deceased with the accused and Hillary and at the time the deceased was okay. He said while at his house the accused tried to beat the deceased saying he was embarrassing him but pw4 stopped him. He said while at the deceased's home again, the accused tried to beat him but pw4 stopped him. He said he left to the centre with Simon, the deceased's uncle leaving the deceased with his father the accused herein and Hillary. He said the deceased was okay at the time they left and that police later went to his home and informed him the child had died.

12. Pw5 Brian Kirwa Koech a mortician at Eldama Ravined hospital testified that on 2.9.2022,3 men arrived at the morgue with a pick up carrying a body.he said he asked them if they had the chief's letter as it is a requirement.They should him the chief's letter and he received the body which was covered in a red maasai shawl.He said one Rispher Chirchir opened the maasai shawl and told him the body had injuries.he said he called the boy's father and asked him why he said he died of natural cause yet the body had injuries.Thye called mogotion police staion who instructed him that the body should not be touched as they do investigations.he said the next day police went to the morgue and postmortem was dine.He showed court the chief's letter the accused gave him.He said accused informed him that the boy was found dead
13. On cross examination he said he recived the nbody and handed over to her colleague as he was handling another body.He said the woulnds on the body were fresh.He said the colleague cakled him and he went to see the body and that when he called the father,he told him the boy was beaten by a mob.
14. Pw6 Doctor Kibet Kimuei testified that he conducted postmortem on the body of the deceased on 16.9.2022 and found that the cause of death was assault as a result of blunt tools. He oproduced postmortem dated 16.9.2022 in court as exhibit. On cross examination ,the doctor said the deceased's was beaten all over his body.

15. Pw7 Hillary Kibet testified that on 30.8.2022 at 4 p.m., on arriving home, he met his brother kirwa who told him he had seen a neighbor's son come out of his house and left through the gate. He said he found his door broken and on entering, he found clothes thrown all over and kshs 6000 he had kept in a bag, camera, torch and charger missing. He said he went to the neighbor's home and informed the boy's mother that their son had broken his house and stolen. He said the boy's mother told him his father had gone to herd; and shortly the boy's father who is accused herein arrived. He said the accused said he would go and look for the boy but the boy was not found. He said he went to report to the chief and on 2.9.2022, the chief called him at 5 a.m. and informed him that the boy had been found. He went to inform accused's brother Simon and then they went to inform accused. He said the chief gave him Kadafi's number, whom he called and he gave them directions to his home.
16. Pw7 said they went to kadafi's house and he showed him a camera then called the deceased who admitted that he stole it from pw7's house. He said the camera had a mark and when he asked the deceased about it, he said he hit the camera on a stone to open. He said at that point, the accused got a stick and beat the deceased but kadafi told him to let them speak to the deceased first. He said the deceased talked and said he had hidden the money under a stone at his home. He said they decided to go to the deceased's home and the accused and

deceased boarded kadafi's vehicle while he used his motor bike and accused's brother Simon followed.

17. Pw7 said on arriving at deceased's home they found his grandmother and grandfather and accused's children were also present but accused's wife was not present. He said accused's father asked the deceased to go and show the money but on reaching where he took them, he said the money was under a tree but they did not find. He later said the money was in another place.pw7 and his father went to the place. He said the boy continued turning stones until he left leaving accused with the deceased and his children. At 8 p.m. he met accused and asked him if they got the money and he told him the boy had passed on. He said later met accused's father holding a cane and told him "this is the work you did yesterday". He said the deceased was okay when he left him with accused. He said he does not know what killed the deceased.

18. In cross examination, pw7 denied beating the deceased. He said they were arrested. He said he did not have a cane and that he di not beat the deceased. He said as they left home and as they looked for the money the deceased was okay. On re-examination, Pw7 said the accused beat the deceased 3 times at kadafi's house using whips but kadafi told him not to beat him.

19. Pw8 no.61062 Senior Sergeant Johnson Wambulwa who was DCI mogotio testified that on 8.9.2022, they received information from Kadafi that there was a family planning to

take a body from the mortuary of a juvenile who had been assault by the father on allegation of theft. They proceeded to accused's house to carry out information. He said they interrogated kadafi who informed them how he found the boy and took him to sleep in his home and also how the accused started disciplining the boy in his presence and Hillary and that they took the boy to his home and left with his parents but later learnt that he had died. He said the police intercepted the family as they were trying to remove the body for burial. He said postmortem revealed tat the boy died as a result of assault. He produced the camera they recovered court as exhibit.

20. Upon close of prosecution case, the court found that prima facie case had been established to warrant accused be placed on his defence. The accused gave sworn evidence and availed 2 witnesses.

#### DEFENCE CASE

21. The accused testified as Dw1. He stated that on 27.8.2022 his son got lost and he was found on 2.9.2022 at Koisanku. He said he reported the loss to the chief and at school. He further stated that he was told his son had stolen from Hillary Kipyegon on 31.8. 2022. He said Hillary went to his house at midnight while annoyed and that he tried giving him money but he refused. He said he looked for motor bike and went to look for the son and on reaching where the child was, he found Hillary had tied him and that he was beating his son telling him

to return his money and the things he had stolen. He said there were many people there. He said Hillary and Kadafi took the child home and he was tied and beaten. He said there were many people and he told them he was ready to refund the money the son had taken but they were so annoyed. He said kadafi and Hillary took the child to his(accused's) home. He said they used a vehicle and they arrived earlier than him and on the way they found kadafi going back and sked where the y left the deceased and he said they left him with accused's mother, wife and child. He said he reached home and found his son seriously ill with injuries on the back. He said he went with a motor bike to look for a vehicle to take him to hospital but on coming back, they found him having died. He went to the chief to get a letter to take him to the mortuary and took him to the mortuary. He said Hillary said its accused who killed the child while it is him (Hillary) who killed the child. He denied killing his son.

22. He said he found his son at kadafi's home having been beaten and that he was pained to lose his child and is disturbed for being charged with killing his child. He said the the people who testified in court contributed to the death of his son,

23. On cross examination, he said the deceased herein who was his firstborn son was 14 years old. He said he died as a result of being beaten and that he had injuries on the back. He said Hillary went to inform him at midnight of 2.9.2022 that his son was at Kadafi.He said he used Gideon's motor bike to go to

kadafi's home. He said Hillary boarded Kadafi's vehicle which returned his so home and someone else dove Hillary's motor bike. He said when he found his son seriously sick at home, he went with the motor rider to look for a vehicle to take him to hospital and when they returned, they found the child had died. He said he told the chief the child had died from being beaten but he did not report to the police. He said he told the mortuary attendant that the child died of natural cause.

24. On reexamination said the child had been beaten at Kadafi's home and that he saw Hillary and other people beating the child

25. Dw2 Vincent Cheseret, a neighbor to accused testified that the deceased disappeared don 27.8.2022 and on 31.8.2022, he received report that the child had been suspected by kibiegion and later kibiegion went to tell accused where his son was .He said the deceased was taken back to his home by a vehicle and he appeared very weak; that he was not able to talk but kibiegion who appeared so angry was talking to him harassing him. He said kibiegion was telling the deceased he had spoilt his camera and said he was beating to discipline him while saying accused had spoilt him. His said accused's father arrived and said the child had been injured and asked him where he was feeling pain and the deceased said the whole body and while they were still there, the child fainted. They tried administer first aid but he died.

26. On cross examination, DW1 said its kibiegon who injured the deceased. He said the accused should have reported the person who beat the child to police instead of getting letter from the chief to take the body to mortuary.
27. On reexamination, he said he did not see the accused beat the child. He added by saying he did not know who beat the child and that he did not see the person who beat the child
28. Dw3 Gideon Kigen a motor rider testified that on 2.9.2022, the accused went to wake him and told him his son had been seen and asked him to koisabiu and on reaching there they found Hillary and kadafi the owner of the home and a few people. He said Hillary had a whip and that he beat the deceased. He said accused him why he was beating the deceased. He said they argued then they took the deceased home. He said Hillary and Kadafi used the vehicle with the deceased while they followed from behind. He said Hillary was angry and he was asking the deceased to show him where he put the money. He said Hillary is also called kibiegon. He further stated that the deceased fainted. He said they checked and realized his condition was bad and accused asked him to take him to the chief. He left accused at the chief. He said he did not know who killed the deceased. He said he saw Hillary beat the deceased but he did not see accused beat the deceased
29. On cross examination he said when they arrived at accused's home, they found the deceased having fainted. He

said he took accused to the chief to report that his child had died. He said the child had injuries on his head. He said the deceased did not die a natural death.

### **ANALYSIS AND DETERMINATION**

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

- a) Proof of death
- b) That the death was caused by an unlawful act or omission of the accused
- c) That the accused acted with malice aforethought as defined under Section 206 of the Penal Code.

#### **(i)Proof of death**

31. It is not in dispute that the deceased, a 14-year-old boy, died on 2nd September 2022.PW5 (mortician) observed injuries on the body and raised concern about the suspicion of assault.PW6 (Dr. Kibet) conducted a postmortem and concluded that the cause of death was multiple injuries inflicted by blunt force, consistent with assault using blunt objects. The defence equally conceded that the deceased died after being beaten. This element is therefore proved beyond reasonable doubt.

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

32. On whether the death was caused by an unlawful act attributable to the accused, the prosecution relied on several witnesses who placed the accused administering corporal punishment on the deceased and present during the period when the fatal injuries were inflicted. **PW4 (Kadafi)** testified that the accused attempted more than once to beat the deceased at his house and at the deceased's home, and had to be restrained. **PW7 (Hillary)** stated that the accused actually beat the deceased using a whip at Kadafi's home before being stopped, and that the deceased was later left in the custody of the accused when PW7 departed. Both PW4 and PW7 confirmed that at the times they left, the deceased was alive, able to speak, and only with the accused and his children. **PW1 and PW2** testified that when the deceased was brought home and after being with the accused, he was in a severely injured state.

33. By contrast, the defence claims that Hillary and members of the public inflicted the fatal injuries. However, the defence witnesses acknowledge they were not present when the deceased remained in the exclusive company of the accused shortly before his death. DW2 and DW3 both concede they did not see who beat the child during this critical period. The accused's own conduct failing to take the injured child to hospital, failing to report to police, and falsely informing the mortuary attendant that the death was natural demonstrates consciousness of guilt and an attempt to conceal the assault.

34. The medical findings also show that the injuries were extensive and inflicted over time, consistent with a prolonged beating, and inconsistent with a single earlier incident by unknown persons.

35. From the cumulative evidence, the prosecution established that the deceased was assaulted after being left in the custody of the accused, that is after PW4 and PW7 had departed;secondly,the accused personally participated in the assault, as stated by PW7 who saw him beat the deceased;thirdly,the accused offered no credible alternative explanation for the source of the injuries suffered under his watch and lastly even if Hillary participated earlier, the accused's acts and omissions were part of the continuous assault leading to death.

36. From the forgoing I am convinced that the fatal injuries sustained by the deceased were caused by an unlawful act in which the accused participated, thus establishing the second ingredient of the offence.

**(iii)Whether the accused acted with malice aforethought**

37. The final ingredient requires proof that the accused acted with malice aforethought as defined under section 206 of the Penal Code. Malice aforethought may be shown by intention to cause death or grievous harm, knowledge that the act would probably cause such harm, intent to commit a felony, or intent to facilitate escape from arrest.

38. In the present case, the evidence from PW4 and PW7 shows that the accused was angered and embarrassed by the deceased's conduct of stealing from Hillary and running away from home for several days. PW4 testified that the accused attempted to beat the deceased both at his house and at the homestead, and PW7 stated that the accused whipped the child. This assault, combined with the accused being the last adult with the child before he was found gravely injured, establishes responsibility for the fatal injuries.
39. However, on the question of intention, the evidence does not show that the accused set out to kill the deceased or to inflict injuries of a nature he knew would probably cause death. The circumstances, taken as a whole, point to a father acting out of anger, frustration and embarrassment, resorting to excessive punishment in an attempt to discipline the child for stealing and bringing embarrassment to the family.
40. The accused did not arm himself in advance, lie in wait, or use weapons suggestive of a premeditated intention to cause death. The evidence reveals a prolonged, emotional response rather than a calculated attack. The assault, although severe and unlawful, appears to have arisen spontaneously as the accused attempted to punish the child for the alleged theft.
41. The court also notes that the accused did not flee after the child's death; he remained at home and later went to the chief for a burial permit. His conduct shows poor judgment and an attempt to conceal the assault, but does not demonstrate an

intention to kill. The postmortem findings confirm multiple blunt injuries, consistent with excessive whipping/corporal punishment, not necessarily with a desire to cause death.

42. I therefore find that although the accused unlawfully assaulted the deceased, the prosecution has not proved malice aforethought beyond reasonable doubt. The evidence supports the conclusion that the accused caused the death unlawfully, but without the requisite intent for murder under section 203.

43. From the foregoing, malice aforethought is not established, and the appropriate offence disclosed by the evidence is manslaughter contrary to section 202 as read with section 205 of the Penal Code.

44. **FINAL ORDERS:**

a) Accused is hereby found guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the penal code and is convicted accordingly under section 215 of the criminal procedure code

b) Right of appeal within 14 days explained.

**Ruling** delivered, dated and signed Virtually at **Kabarnet**

**This 27<sup>th</sup> Day of November 2025.**



.....  
**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

CA Elvis

Ms. Kosge for state

Mr. Mongeri for Accused

Accused Present