

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL CASE NO. 3 OF 2015**

REPUBLIC.....PROSECUTOR  
R

- V E R S U S -

DOMINIC KIRUI KIPROTICH.....1<sup>ST</sup>  
ACCUSED

VICTOR CHERUIYOT YEGON.....2<sup>ND</sup>  
ACCUSED

---

**JUDGMENT**

1. The accused persons Namely: ***Dominic Kirui Kiprotich and Victor Cheruiyot Yegon*** underwent trial on the information of murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The prosecution summoned six witnesses to testify in support of the case against the accused persons.
3. ***Hillary Kiprono Bett (PW.1)*** stated that on 31/12/2014, he was with the Late ***Victor Kipng'etich Mutai*** who was with about ten (10) friends at Platinum Bar.
4. ***PW.1*** said that he saw someone get up and hit him with his fist on the head and that he intervened to find out what was happening and that no one told him what the quarrel was about.

5. He said he took the deceased out of the club and asked the deceased's Cousin to take the deceased home before returning to the club.
6. **PW.1** said he knew the person who hit the deceased but that he was not in Court. He stated he left the club at around 4.00 a.m. for home where he slept and that he was woken up at 5.00 a.m. and informed that the deceased had been beaten up and injured.
7. **PW.1** said he was informed at around 6.00 a.m. that the deceased had been taken to Hospital but he succumbed to his injuries and died.
8. **PW.1** also confirmed that **Dominic and Victor (1<sup>st</sup> and 2<sup>nd</sup> Accused)** are known to him and that they were both at Platinum Club. He said he did not see any of them assault the deceased.
9. **Stephen Kimutai Koech, (PW.2)** said on 1<sup>st</sup> January, 2015, he received a call from his daughter, **Irene Chepkurui** telling him that his son (deceased) was seriously ill and that he had been taken to hospital in Chepseon where he was referred to Kericho Nursing Home.

10. **PW.2** stated that the deceased passed on at **Kericho Nursing Home**.
11. **PW.2** said that some elders were sent by the Accuseds' parents to meet him and seek for forgiveness.
12. **Dan Kibet (PW.3)** said that on 31/12/2014 he was at Platinum Club together with **Willie Kirui** when he heard a commotion from the neighbouring table where the deceased and the accused persons were sitting. **PW.3** also said that the deceased and the accused persons sat together having drinks.
13. **PW.3** said he saw **Dominic** and the **deceased** exchanging bitter words. He said he also saw the **deceased** fighting **Dominic (1<sup>st</sup> Accused)** by giving him a blow.
14. He stated that the duo started fighting and one **Victor Koech** intervened. He said he saw the deceased use a bottle to hit **Dominic** on the head and **Dominic** started bleeding.

15. **PW.3** said both Dominic and the deceased were outside the Club. **PW.3** said he, **Winnie** and the **accused** were back to the Club where they stayed for an hour.
16. **PW.3** claimed that the deceased started becoming violent due to heavy drinking. **PW.3** said that the deceased's uncle called Hillary, instructed his Cousin to take the deceased to his grandfather's home.
17. **PW.3** said he saw **Victor** and the deceased leave the Club at about 3.30 a.m. **PW.3** said that he did not see **Dominic (1<sup>st</sup> Accused)** leaving the Club. **PW.3** was stood down when he started departing from his written witness statement. He was declared a hostile witness.
18. **Richard Kipkoech Maritim (PW.4)** was also declared a hostile witness upon the application of the Prosecution.
19. **Sergeant Simon Nderito (PW.5)** the Investigating Officer stated that he recorded statements from witnesses who said the deceased and the accused persons fought in Platinum Bar. **PW.5** said that no single witness saw the accused persons follow the deceased when he left the bar.

20. In Cross-Examination, **PW.5** also confirmed that there was no witness at the scene of crime when the deceased was killed.
21. **P.C. Sammy Nzao (PW.6)** said he took over the investigation of the case from **Samuel Nderitu (PW.5)**. He produced the Postmortem Report since **Dr. Lang'at** who performed the autopsy could not be traced.
22. The Pathologist indicated in the Postmortem Report that the cause of death was subdural hematoma, secondary to trauma of the head (deep cut to the left ear).
23. The accused persons each gave sworn testimonies in their defence. **Dominic Kirui (DW.1)** told this Court that on 31/12/2014, he was having drinks at Platinum Bar with **Victor Yegon** a friend when **Victor Kipngetich Mutaai (deceased)** came banging their table while he was drunk and demanding to be bought drinks by him.

24. **DW.1** said that the deceased held him by the colour when he told him he had no money to buy him drinks.
25. **DW.1** stated that he lost consciousness when **Victor Koech**, a friend of the deceased hit him with a bottle. He said **Victor Yegon** and **David Lang'at** administered first aid on him and upon regaining his consciousness, he together with **Victor Yegon** left for home.
26. He said he slept and the next day, he heard that the deceased had passed on and that his body was found lying along the road. He denied murdering the deceased.
27. **DW.1** stated that elders organized for him to undergo the Kipsigis Traditional Cleansing Ceremony.
28. **Victor Cheruiyot Yegon (DW.2)** stated that he was at Platinum Bar on 31/12/2014 having a drink with **DW.1**. He said that **Victor Kipngetich Mutai (deceased)** who was at the Bar came to their table and demanded to be bought drinks.

29. **DW.2** said **Victor (deceased)** became chaotic causing a commotion. He said that the deceased in the process hit **Dominic (1<sup>st</sup> accused)** using a bottle of soda and **Dominic** lost consciousness and bled.
30. **DW.2** said he was forced to apply first aid to **Dominic**. **DW.2** said they dispersed and the next day, the lifeless body of the deceased was found about 1 ½ kms from where they spent the night.
31. **DW.2** denied playing any role in the death of the deceased. **DW.2** stated that since they were the last people to be seen with decease while alive, the elders deemed it fit to organize a cleansing ceremony according to the Kipsigis Tradition and Customs.
32. At the close of the evidence, parties were invited to make submissions. It is the submission of the defence that none of the prosecution witnesses saw the accused persons

assault the deceased on the head hence the Prosecution's case heavily relies on circumstantial evidence.

33. The defence further submitted that there is no complete chain of events that concludes that within all human probability, the crime committed by the accused persons and no one else. The defence also argued that the Prosecution failed to prove malice aforethought on the part of the accused persons.

34. In order to establish the offence of murder, two ingredients must be established to exist. First is ***actus reus*** and Secondly ***mens rea***.

35. On the first ingredient, the prosecution must prove beyond reasonable doubt that the death of the deceased was due to an unlawful act or omission by the accused persons. It is not in dispute that the accused persons and the deceased were at the material time in Platinum Bar at Chepseon Trading Centre.

36. Evidence were let to show that the two accused persons were having a drink at a particular table and that the deceased who was seated in another table went to the table where the accused persons were and demanded to be bought drinks.

37. It is also the evidence of **PW.1** and **PW.3** that there was an altercation between the 1<sup>st</sup> accused person and the deceased when the 1<sup>st</sup> accused failed to buy drinks to the deceased.

38. It is the evidence of **PW.1** that he was at the Club when he witnessed someone hit the deceased with his fist on the head. He said he decided to take the deceased outside the Club to avoid further confrontation at the club. **PW.1** said he instructed the deceased's Cousin to take the deceased home before going back to the club.

39. **Stephen Kimutai Koech (PW.2)** told this Court that after the lapse of between 4 and 5 days from the date the deceased died, three elders were sent by the accuseds

parents to meet him telling him that accused persons were seeking for forgiveness. **PW.2** mentioned the names of **Dominic Kirui** and **Victor Cheruiyot Yegon** as the accused persons whose parents had approached elders to seek for forgiveness from him.

40. In his defence, **Victor Cheruiyot Yegon (DW.2)** told this Court that since they (accused) were the last people to be seen with **Victor Kipngetich Mutai (deceased)** alive, the elders deemed it fit to conduct traditional cleansing. The evidence of **DW.2** corroborated the evidence of **PW.2** that the accuseds' parents had approached three elders namely: **Kipkirui Rono, Wilson Chirchir** and another nicknamed '**Abundantly**' to seek for forgiveness from the deceased's father (**PW.2**).

41. **Dominic Kirui (DW.1)** in his defence said that there was a scuffle between him and the deceased when he refused to buy the deceased drinks. In fact **DW.1** said the deceased held him by the color when he refused to buy him

drinks. **DW.2** in his defence also stated that the deceased started the chaos at the club.

42. **Dan Kibet (PW.3)** stated that he was at the club (Platinum) and witnessed chaos break up and that there was commotion between **Dominic (DW.1)** and the deceased. **PW.3** also said that the deceased started fighting Dominic (**DW.1**). **PW.3** was categorical that the duo (*i.e. DW.1 and deceased*) started fighting.

43. **PW.3** stated that both the **deceased** and **Dominic** were taken out of the club after fighting. **PW.3** stated that the deceased left the club with his Cousin called Victor between 3 a.m. and 3.30 a.m.

44. After a careful analysis of the evidence tendered, I am satisfied that both the accused persons are placed at the scene of crime and had access to the deceased. The duo admit that they were the last people to be seen with deceased while he was still alive. This Court is convinced that the evidence link the accuseds as the persons who

caused the death of the deceased. It would appear the accused persons followed the deceased and killed him on his way home.

45. The Second ingredient of malice aforethought needed to have been established by evidence. The definition of ***mens rea (malice aforethought)*** is given under **Section 206 of the Penal Code** as follows:-

***“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 caused 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.”***

46. A careful consideration of the evidence tendered will reveal that the killing of the deceased took place at night and after the deceased and the accused persons had taken alcohol at Platinum Bar. The fighting arose while the deceased and the accused persons were having drinks at Platinum Bar. They were all intoxicated with alcoholic drinks. The element of malice aforethought was not proved.

47. In the end, the information (offence) of murder was not proved. However, the evidence clearly show that the offence of manslaughter was established.

48. Consequently, the accused persons namely: ***Dominic Kirui Kiprotich*** and ***Victor Cheruiyot Yegon*** are hereby found guilty and convicted for the offence of ***Manslaughter Contrary to Section 202 as read with Section 204 of the Penal Code.***

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

.....  
**J. K. SERGON  
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Prosecutor - Maundu

Convict - Present in Person

Kirui for 1<sup>st</sup> and 2<sup>nd</sup> Accused