

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPSABET

CRIMINAL DIVISION

CRIMINAL CASE NO. E024 OF 2022

REPUBLIC.....

.....**PROSECUTOR**

VERSUS

ELIJAH KIPCHUMBA

MAGUT.....**1ST ACCUSED**

ABRAHAM KIMUTAI

KOSGEI.....**2ND ACCUSED**

JUDGMENT

1. The information dated 1st December 2022, filed herein by the Director of Public Prosecution charges the two Accused, **Elijah Kipchumba Magut** and **Abraham Kimutai Kosgei**, with the offence of murder, Contrary to Section 203 as read with Section 204 of the Penal Code. The two are alleged to have murdered Laban Rotich [deceased] on the 20th November 2022 at Sigot Location Nandi County.

2. It was the case for the prosecution that on the material date in the morning hours the deceased accompanied by his brother called **Timothy Kiptum Too** alias **Tummy [PW4]**

proceeded onboard the vehicle of the deceased to a place commonly known as “jobless corner” to look for casual labourers to work on maize at **Kiptum’s** home. The two were accompanied by one **Kipsang** as they proceeded to the so called jobless corner situated at a place called Sachangwan.

3. At the jobless corner, the deceased and his team found and picked three labourers including **James Kiprotich Lagat [PW1] alias “Karate”** and **Edwin Kipchirchir Ruto [PW2] alias “Woria”**. In total six [6] people were on board the deceased’s vehicle as they headed to a place called Kapkeringo. On the way, the deceased received a phone call and was informed that there was a tractor ploughing his nearby farm.
4. The group then diverted towards the farm when they reached a point where they could not access the farm with the vehicle. They stopped the vehicle alighted from it and proceeded to the farm on foot. On arrival, the deceased and his brother **[PW4]** jumped over a fence and entered inside the farm from one side. The group of six found the First Accused **[Edwin]** ploughing the farm with a tractor.
5. The deceased’s brother **[PW4]** made attempts to stop the First Accused even as he saw the Second Accused **[Abraham]** confronting and stabbing the deceased with a

panga [machete]. The first Accused stopped and jumped out of the tractor to also attack the deceased with a panga. Both Accused were joined by a brother of the First Accused called **Meshack** also known as “*Masaa*” who was armed with a small axe which he also used to attack and assault the deceased.

6. Both the attackers and the victims of the attack were persons who enjoyed family relationships. The incident attracted a group of villagers to the scene but they were unable to come to the rescue of the deceased whose arm wrist was actually chopped off and detached from his body.

The **Area Assistant Chief, Rotich Fiphian [PW3]**, was at the time at his home when he heard screams and shouts after which he received a phone call from a colleague and informed to proceed to the scene. On the way he found a vehicle make probox belonging to the deceased. The deceased’s brother PW4 was inside the vehicle. He told him [Chief] to rush to the farm where the deceased was left.

7. The chief arrived at the farm and found a crowd of villagers who informed him that the deceased had already been taken to the hospital. He found a piece of the deceased’s severed arm in the farm but it was collected by the police when they arrived at the scene. The deceased was pronounced dead on arrival at the hospital. The necessary post mortem report

[P. Exhibit 4] showed that the deceased died from severe head injury caused by high velocity sharp object.

8. CPL. Venant Mghanga [PW5], carried out the necessary police investigations after the matter was reported to them by the Area Chief who indicated that two families were fighting on a disputed parcel of land in Sigot. He **[PW5]** and his team of police officers rushed to the scene and found a group of villagers who were in the company of the chief.

9. The police officers learnt that the two families had all along been fighting over the land. They [officers] recovered a black jacket **[P. Exhibit 2]** at the scene. It was said to belong to the deceased and as they combed the scene recovered the severed left wrist belonging to the deceased. The suspect murder weapon, a panga **[P. Exhibit 1]** was also recovered.

10. The recovered jacket and panga were forwarded to the Government Chemist for analysis. The report from the Government Chemist **[P. Exhibit 3]** indicated that the blood stains on the jacket belonged to the deceased while those on the panga belonged to the deceased as well as the first Accused. The two Accused were eventually charged with the present offence after conclusion of the police investigations.

- 11.** The defence case for both Accused was a denial. The First Accused indicted that he was ploughing their farm with a tractor and was in the process joined by his brother, **Meshack Magut**. Shortly thereafter, he saw a group of people near the farm fence. Among them were the deceased and **Timothy [PW4]** his cousins. They jumped over the fence and stopped him from ploughing. He [First Accused] stopped the tractor and was immediately attacked by the duo while he was still atop the tractor. The duo used a long stick and a panga to assault him.
- 12.** The First Accused indicted that the panga being used by the deceased to attack him fell down and was picked by his brother **Meshack** who then used it to slash the deceased. In the meantime he [First Accused] was struggling with the deceased's brother [PW4] and defending himself and after his brother **[Meshack]** let go the panga he picked it while the deceased was already on the ground after being assaulted by **Meshack**.
- 13.** The First Accused further indicated that he was bleeding from his injury, hence proceeded to nearby hospital for treatment while carrying the panga with a view to taking it to the police. He actually took the panga to the police station and was informed to first seek treatment. He filed his

report at the police station, but was later arrested. He produced a photograph **[D. MFI 1]** of his injured self-taken by his sister called Salome and contended that the deceased was not killed by himself, but by his brother **Meshack**, now deceased.

14. On his part, the Second Accused said that he lived in Kapringo and a driver by occupation. He arrived at Sigot from Nairobi on the material date and found a group of people heading towards a certain direction. He stopped his lorry, alighted and followed the group to a farm where he found the deceased lying down. He at the same time saw the First Accused fighting with **Kiptum [PW4]** on top of a tractor. He also saw the First Accused's brother **[Meshack]** entering a nearby sugar cane plantation, before he decided to separate the fighting duo of the First Accused and **Timothy [PW4]**.

15. The fighting continued and in the attempt to separate the fighters the Second Accused was slashed with a panga by Timothy **[PW4]**. Thereafter, he [Second Accused] boarded a motor cycle taxi [Boda-Boda] and proceeded to hospital for treatment. It was while he was at the hospital at Kabiyet that the police arrested him before being charged in court with the present offence. He contended that he found the deceased already lying on the ground when he arrived at the scene and did not therefore murder him.

16. Thomas Agufa [DW1], then a casual labourer at a sugarcane farm in Sigot Nandi County indicated that he was at the material scene on the material date when he saw the deceased and his brother **Timothy [PW4]** remove a panga from a bag and use it to cut the First Accused who at the time was driving a tractor. He **[DW1]** said that the panga also hit the tractor and fell down from where it was collected by a brother of the First Accused **[Meshack]** who used it to cut off the deceased's arm.

17. Agufa [DW1] further stated that many people arrived at the scene and at that time he saw the Second Accused bleeding and appearing to have been injured. He **[DW1]** feared for his life and left the scene.

Daniel Kirwa [DW2], was heading to Sigot when he saw a tractor ploughing a nearby farm. The ploughing suddenly stopped and aroused his curiosity. He realized that there was something wrong and then saw the tractor driver [i.e. First Accused] bleeding from his head after being slashed by one of the two people below the tractor including the deceased. He **[DW2]** also stated that the person **Meshack** suddenly appeared at the scene and used a panga to slash the deceased.

18. In its totality, the evidence presented by both sides coupled with the rival submissions of the parties shows that

there was no dispute that the deceased suffered fatal injuries after being assaulted by and/or involved in a physical confrontation with the two Accused and another or others. The others are said to have been the deceased's brother **[PW4]** and the brother to the First Accused, a person known as **Meshack Magut**.

19. The severity of the injury suffered by the deceased was a clear manifestation of an intention to cause grievous harm rather than to outrightly kill the deceased given that the evidence indicated that the actual source of the violent confrontation between members of a larger family was a long standing family land dispute. However, under Section 206[a] of the Penal Code, Malice a forethought is deemed even if the intention was to cause grievous harm to the deceased rather than to kill him.

20. Therefore, in this case the evidence showed that grievous harm was occasioned to the deceased and this resulted in his death as depicted in the post mortem report [P. Exhibit 4]. In the circumstances, it may be safely stated that the deceased was actually murdered. Now, the question is whether the murder was committed by the two Accused or anyone of them with another not before court.

21. Basically, the legal duty to establish and prove the case against the Accused beyond reasonable doubt is placed upon the prosecution and the evidence presented herein by the

prosecution was credible and sufficient enough to prove without particular or substantial dispute from the defence that due to a long standing land dispute involving the larger family of both the deceased and the Accused a violent confrontation ensued between members of the two families on the material date when members of the Accused's family attempted or did actually commence ploughing a parcel of land for which the members of the family of the deceased lay a claim.

22. Ideally, the disagreement over ownership of the parcel of land ought to have been resolved in accordance with the law in a peaceful and lawful manner. However, the evidence herein from both sides showed that family members of the two parties decided to take the law into their own hands which resulted in the deceased sustaining fatal injury. It was evidently clear that the violent confrontation involved the deceased and his brother **[PW4]** against the First Accused, his brother **Meshack** [now said to be deceased] and the Second Accused, a nephew to both the deceased and the First Accused.

23. Indeed, this was a violent family confrontation which involved the usage of dangerous weapons such as pangas and an axe as a result of which unreasonable and excessive force was used by the two Accused and **Meshack** against the deceased clearly with the intention to cause him

grievous harm which led to his death. It did not matter from whom the “*killer blow*” came as between the First Accused, Second Accused and **Meshack**. They all participated in the assault against the deceased with a common intention to occasion him grievous injury and the “killer blow” was a product of their participation as direct principal offenders and/or aiders and abettors.

24. It also did not matter that the deceased and his brother [PW4] also participated in the violent confrontation, brawl or fight which led to the death of the deceased. If it was the deceased and his brother who initiated the violent confrontation by attacking the Accused first, he Accused ought not have counter attacked the deceased and his brother or vice-verse. In attacking and counter attacking the combatants took the law into their own hands oblivious of the fact that two wrongs do not make a right.

25. In essence, the prosecution did establish its burden of proving the charge against the two Accused beyond reasonable doubt. Consequently, both Accused are herein found guilty as charged and convicted accordingly.

Dated and Delivered this 19th day of February 2026

**HON. J. R. KARANJAH,
JUDGE**

