

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAPSABET**

**CRIMINAL DIVISION**

**CRIMINAL CASE NO. E008 OF 2021**

**REPUBLIC**.....

**.....PROSECUTOR**

**VERSUS**

**CLINTONE ROCHO**

**NABALI.....ACCUSED**

**JUDGMENT**

**1.** Under Cover of the information filed herein on the 19<sup>th</sup> March 2020 by the Director of Public Prosecutions, the Accused **Clintone Rocho Nabali** was charged with the offence of **Murder, Contrary to Section 203** as read with **Section 204** of the **Penal Code**.

It was alleged that on the 14<sup>th</sup> March 2020, at Mwein Village Chesumei, within Nandi County the Accused murdered **Patrick Endoho**.

**2.** The case for the prosecution was that on the material date at about 8:00pm the deceased and others were at the home of the Accused's girlfriend or wife named **Afrine** partaking of

the illicit liquor commonly known as “changaa”. In the process, the deceased and fellow revellers became noisy prompting the Accused who was inside the house to ask them to stop the noises but all in vain. He then accosted and engaged in a scuffle with the deceased who cried out and shouted that he had been stabbed.

**3.** Other revelers including **Erick Ijumba [PW1]**, **David Abara [PW2]** and **Jackson Kiima [PW3]** left the scene immediately after the scuffle or much later for their respective homes. The deceased also left the scene, but on the following morning he was found lying dead on the ground near the scene with a stab wound on his abdomen. His intestines were protruding.

**4.** A report was made to the nearby Kiptuiya Police Post through the area chief. **PC Kevonge Clinton [PW4]** commenced investigations by firstly visiting the scene and retrieving the body of the deceased therefrom. He noted a stab wound on the left rib area of the abdomen. Secondly, he interrogated some of the revelers who were at the scene at the material time and gathered that the Accused and the deceased quarreled and in the process they engaged in a brawl which resulted in the deceased being stabbed on the abdomen by the Accused.

5. At the scene where the body of the deceased was found there was a gathering of villagers. The Accused was also there. The mob of villagers bayed for his blood. He was assaulted by the mob, but saved from instant death by the police who whisked him away and handed him over to officers of the Directors of Criminal Investigations [DCI].

6. **P.C. James Mutiva [PW6]** of the DCI Nandi Central took over investigations of the case and gathered that both the Accused and the deceased were on a “changaa” drinking spree when they quarreled and fought and in the process the Accused stabbed the deceased on the abdomen with a knife. On the following day the dead body of the deceased was found lying on the ground in a tea plantation. The Accused was arrested and eventually charged with the present offence after the post mortem carried out on the body of the deceased revealed that the deceased died from severe acute blood loss due to intestinal and splenic injury as a result of the stab wound. The post mortem report confirming as much **[P. Exhibit 1]** was compiled and signed by **Dr. Evans Kibiwott [PW5]**.

7. The defence case was a denial and an indication that the Accused did not at all assault the deceased on the material date. He stated that the deceased, himself and others were drinking the alcoholic drink near his house. Later, he left

the place and went into his house where he remained with his wife and infant child. But, the deceased and others followed him into the house where they made noise and smoked cigarette, thereby disturbing his family. He decided to eject them from inside the house, but they resisted and insulted him. He left them outside his house and went to bed even as the deceased and others left and went away.

8. The Accused further stated that he was confronted on the following day by a group of villagers accusing him of having killed the deceased. The group caused mayhem and chaos at his home prompting him to flee. He was later arrested and charged with the present offence which he contends he did not commit.
9. Basically, the evidence foregoing coupled with the submissions presented herein by both the prosecution and the defence brings into the fore the actual issue for determination in this matter. This is whether the deceased was assaulted and occasioned fatal injury and if so, whether the Accused was responsible for the offence. If so, whether he acted of malice afterthought at the material time.
10. In that regard, there was ample and credible evidence from **Eric [PW1]**, **David [PW2]** and **Jackson [PW3]** establishing that the deceased was assaulted and fatally

injured while engaging in a scuffle or brawl/ or fight with the Accused.

The witnesses said that from the outset of the brawl the deceased cried out that he had been stabbed.

- 11.** There was evidence from the same witnesses that on the following morning after the discovery of the body of the deceased lying on the ground a stab wound was found on his abdomen with protruding intestine. This was confirmed by the initial Investigations Officer **[PW4]** who was among the first police officers to arrive at the scene of the discovery.
- 12.** The evidence of **Dr. Kibiwott [PW5]** also confirmed that the deceased suffered a stab wound to his abdomen and showed that the injury extended to the intestines and spleen causing severe acute blood loss. This was the actual cause of the death of the deceased.
- 13.** The Accused did not deny having been present at the scene at the material time. He freely confirmed that he was among the revelers in that “changaa” drinking party and actually impliedly indicated that he was involved in the scuffle with the deceased when he stated that he ejected the deceased and the others from his house after they disturbed his family with their noises.

- 14.** All the witnesses at the scene confirmed that it was the Accused who engaged in the scuffle with the deceased and stabbed him. A knife was said to be the offending weapon, but it appeared not to have been recovered at the scene or from anybody.
- 15.** Given the circumstances of the case and the credible evidence by the key prosecution witnesses it is the finding of this court that indeed the deceased was fatally assaulted and that the person responsible thereof was no other than the Accused. His defence in denying criminal responsibility for the offence was adequately disproved.
- 16.** As to whether the Accused acted of malice aforethought in fatally assaulting the deceased, the gravity of the injury would imply that his intention was to cause grievous harm to the deceased and terminate his life. However, the circumstances leading to the offence clearly showed that there was no premeditated intention to kill the deceased.
- 17.** This was a group of changaa drinkers who lost their sense of judgment due to intoxication and engaged in senseless brawls. Indeed, it would appear that the Accused's action of stabbing the deceased was spontaneous or impulsive than intentional.

It would therefore follow that in the absence of malice aforethought or failure by the prosecution to establish and prove the vital ingredient, the Accused cannot be said to have murdered the deceased but rather killed him without the intention of doing so.

**18.** It is thus the finding of this court that the prosecution has established and proved beyond reasonable doubt the offence of manslaughter against the Accused, Contrary to Section 202[1] of the Penal Code.

The Accused is hereby found guilty of manslaughter and convicted accordingly.

**Dated and Delivered this 18<sup>th</sup> day of February 2026**

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