

REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 33 OF 2016

REPUBLIC.....PROSECUTOR

R

VERSUS

SAMMY KIPNGENO

ROTICH.....ACCUSED

JUDGMENT

1. **Sammy Rotich**, the Accused herein, is before this Court charged with the information of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The Particulars of the information are that on the 12th day of September, 2016 at Ngesumin Village, in Bureti Sub-County within Kericho County, the Accused murdered **Geoffrey Korir**.

2. The prosecution summoned five (5) witnesses to testify in support of its case against the accused.

3. The Accused Person testified giving sworn evidence in his defence and summoned two (2) independent witnesses.

4. Five witnesses testified in support of the Prosecution case. PW1, Wesley Rono, stated that on the material day he went to the accused 's home together with Benard Kirui, Davies Langat and Fredrick Kirui that they had gone to resolve an issue there was allegation that the accused had an affair with Davies wife and the wife to the the accused had gone to Davies Langat's home and threatened to stab the wife. On arrival, they were chased away by

the accused. Shortly thereafter, he heard screams and rushed to the scene, finding the deceased lying on the ground after being struck by the accused he said he confirmed that the accused was the one fighting and had hit the deceased. He placed the deceased on a motorbike and took him to hospital where he later succumbed to his injuries.

5. PW2, Davis Langat, testified that he was on the road waiting for his brothers ,the accused wife had gone to his house and informed him that the accused had an affair with his wife, they had gone with Benard Kirui ,Fredrick Korir and Wesley Mibei ,when they got to the accused's home the accused person went to the house and took a club and a panga and people screamt and that mother to the accused person came and took hold of him and locked him in the house but his brother Kenneth Rotich opened the door and the accused ran towards where he was standing together with the deceased he testified that he saw the accused hit the deceased on the head and he felt down. He took him to the hospital by a motorbike where he was admitted for two weeks and he succumbed.

6. PW3, Dr. Langat, a medical officer, testified that he conducted an autopsy and formed the opinion that the cause of death was severe head injury/subdural haematoma following assault with a blunt object.

7. PW4, P.C. Eliakim Orita, testified that he received a report from Robert Rono of a serious assault of deceased by a cousin Sammy Rotich and that he was admitted in AIC Mission Hospital and they went to the hospital with the OCS Litein Police Station and they found the accused in the hospital ICU. On 20/9/2016 he was informed that the deceased had succumbed to his injuries, together with PC Benard Bii and PC Barongo they arrested the accused at Kuruma Tea Estate in Bomet County.

8. PW5, CPL Paul Oguta, the investigating officer, testified that he visited the scene and recorded witness statements and upon completion of investigations presented the accused to be charged with murder.

9. In his defence, he testified that Davis, Benard and Wesley went to his house, he said that Davis was alleging that he had an affair with his wife, the accused stated that a confrontation arose and the trio left and they shortly came armed, the deceased was not armed. He alleged that Fredrick, not himself, struck the deceased fatally during the fracas, he ran and hid at Joel's house and later reported at Litein Police Station.

15. In order for the offence of murder to be proved, two ingredients must exist; First, the act of death taking place (actus reus) and Secondly, malice aforethought (mens rea).

16. In this case, there is no doubt that the Accused was placed at the scene of crime. There is also no dispute that the deceased

died as a result of severe head injury/subdural hematoma following assault with a blunt object. The element of actus reus is established.

17. The second element is malice aforethought. Section 206 of the Penal Code defines malice aforethought as intention to cause death or grievous harm, knowledge that the act will probably cause death, or intent to commit a felony.

18. In ***Republic v Tubere s/o Ochen (1945) 12 EACA 63***, the court held that malice aforethought is inferred from the circumstances of the case, including the nature of nature of the weapon used, the part of the body targeted, the manner of use and the conduct of the accused before and after the attack.

19. Similarly in ***Nzuki v Republic [1993] eKLR***, the court held that malice aforethought is inferred from the nature of the weapon used, the manner of its use, and the part of the body targeted. Here, the accused used a heavy stick, he hit the accused on the head a vulnerable and vital part of the body, he pursued the accused before attacking him and he fled immediately after the assault and went into hiding.

21. The evidence here shows intention to cause grievous harm, even if the accused did not intend to kill, intention to cause grievous harm is sufficient to establish malice aforethought under section 206 (a) of the penal code .

22. Having established the ingredient of malice aforethought, the court finds the accused guilty of the offence of Murder Contrary to

Section 203 as read with section 204 of the penal code. He is accordingly convicted.

**Dated, signed and delivered at Kericho this 19th day
of March, 2026**

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**J. K. SERGON
JUDGE**

In the presence of:

C/Assistant - Rutoh

Prosecutor - Kimaru

Accused - Present in Person

Koech for the Accused