



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. E003 OF 2024

REPUBLIC..... PROSECUTION
VERSUS
SAMUEL KAMOI CHESIRE.....ACCUSED

JUDGMENT

1. The accused, **SAMUEL KAMOI CHESIRE** 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 22nd March 2024 at Heritage near national oil filling station within Kabarnet township in Baringo County, murdered one Sammy Boit Kiprop.
2. The accused pleaded **not guilty**, and the matter proceeded to full trial with prosecution calling 7 witnesses and upon close of prosecution case, the court found that prima facie case was established to warrant accused be placed on his defence. The accused chose to give sworn evidence and did not call any witness.

PROSECUTION'S CASE

3. PW1 Sheila Toroitich who sell in a shop at Tugen Hills testified that on 22nd March 2024, the deceased Sammy went to ask for change of Kshs 50 and because she did not have, he asked from Kipchai and another person. She said Kipchai told the deceased "there is something you are looking from

me". She said the deceased went without responding to kipchai. She said shortly thereafter she went outside and saw the deceased Sammy being taken to hospital she said she was busy in the shop and did not see what happened between the deceased and kipchai. She later learnt that Sammy had died. She said she did not see what happened to Sammy before he was taken to hospital. She said Kipchai is accused herein and that she had not disagreed with him. She was new in the area.

4. Pw2 George Kemboi who worked at Heritage club and Restaurant testified that he was on duty on 22nd March 2024 at night and handed over at 11 a.m. He testified that at around 10 a.m. he was basking outside when he saw two people fighting. He said the two were Kipchai the accuse therein who was a watchman and the deceased herein Sammy. He said the deceased Sammy went to work in a berber shop then came out to ask for change. He said as he left the shop, the accused Kipchai kicked him. He said the first fight was at the time the deceased asked for change and secondly was at the time the accused kicked him. He said upon being kicked, the deceased's coins fell down and he picked and went to the berber shop. He said they asked the accused to go then they proceeded with their work. He said he went to loto to play and the deceased also went there and they played loto near where the deceased was kicked. He said after playing loto, the deceased started waiting. He said he left the deceased and went to the pool but shortly he was called by Kimutai who told him the deceased was unable to go for long call. He said he went to check and found the deceased had a swelling below the stomach. He said the deceased was taken to Barnet Memorial hospital by Jona and Tarus. He said the deceased was referred to Kabarnet referral hospital and when he went

to see him, he did not find him in good state on cross examination, pw2 said the deceased was well when he reported to work and that the accused hit him on the right side. He said the next day, he learnt that the deceased had died. He further stated that the accused and the deceased were friend and that both had taken alcohol but the deceased was not drunk. He said the deceased fell down on being hit and denied that the accused sat on the deceased after he had fallen. He said him and Kinutia separated deceased and accused.

5. Pw3 Cosmas Kemboi Songol a security office at a wines and spirits shop testified that on 22nd March 2024 at around 10 a.m., he separated the deceased and thereafter, the deceased asked him to take him for a short call but he was unable to urinate and he started sweating. He said the accused left when he saw the deceased sweating. Pw3 assisted in taking him to hospital accused who were fighting. He later learnt that Sammy had died.
6. PW3 was recalled for cross examination by defence counsel. He said he did not see the deceased being hit on the head and that he did not complain of being hit on the head. He added that before being hit, the deceased was not sick or ailing.
7. Pw4 Enoch Kipchumba a cousin to the deceased identified the deceased's body for postmortem.
8. Pw5 Dr. Nenkai Leiro testified that on 22nd March 2024, he was called to review a patient who is the deceased herein. He said the deceased was in obvious abdominal pain. He

learnt from his relatives that he was intoxicated during the incident. On examination, he found an obvious mass measuring 3 to 4 cm on the left abdominal region which was painful on touch and it moved in and out. He said abdominal ultrasound showed intestinal ania meaning some intestines moved to where it should not have been; and minutes later, the patient had difficulty breathing and resuscitation was done. He started having tremors and general body weakness. He prepared a report which he produced in court as exhibit. He stated that he learnt from the family that the deceased had epileptic fits and he suspected he was hit on the head and had internal bleeding. He said the deceased started having difficulty breathing again. Resuscitation was done again but it was not successful.

9. PW6 Dr. Barmuyon Amdany Pius performed postmortem on the body of the deceased Sammy Boit Kiprop on 28th March 2024 and found massive free fluid and blood in the abdomen, ruptured bladder and extensive soft tissue hematoma and on urinary system. He concluded that the cause of death was hemorrhage secondary to blunt abdominal injury and bladder rupture produced postmortem in court as exhibit. On cross examination, pw6 said he is not a pathologist but he works under instruction of pathologist and is qualified to perform postmortem.
10. Pw7 no.92276 CPL Philegona Atieno visited the scene in Zombi street in Kabarnet town on 27th march 2024 upon being handed over the file. He said accused was arrested on 25th march 2024. Accused in court under miscellaneous application too be allowed to detain him for 7 days so as to complete investigations. He was later arraigned in court for

the charge of murder after mental assessment. He later handed over to file to PC Florence before photographs were printed.

Defence Case

6. Upon being placed on his defence, the accused opted to give sworn statement. He denied killing the deceased on 22nd March 2024. He confirmed that he worked as security guard and said he proceeded for leave on 20th March 2024 and resumed duty on 20th March 2025 at 6 a.m. He said he went to sombi street and met the deceased. He said the deceased saw coins he had and requested for the coins to give to a customer but accused refused and the deceased beat him. He said the deceased pushed him and he fell down. He said the deceased passed him and went to work. Accused said at the time, he had taken a little alcohol and Cosmas went to tell him to go home as he was drunk. He said he went to his house and slept; and when he returned he was told the deceased was sick and had been taken to hospital. He said he did not get time to go and see him in hospital he worked and went to his house to sleep after work. He said at 9 a.m, he went to drunk busaa and while there, he was told he was being looked for as Sammy had died and that he killed him. He went to police station to report that he was being looked for and he was told to go police station the next morning. When he went back, he was interrogated and was told he was to be charge for murder. He said Sammy was his close friend. He said the deceased was drunk and had kidney problem as he would rush to the toilet when shaving customers. He said he was also drunk. He denied that he

fought with the deceased but said he had difficulties with kidneys as he would take long whenever he went to the toilet. He said the doctor lied by saying the deceased did not have kidney condition. He said the deceased had been taken to hospital several times. He said he had no reason to kill the deceased and he had even gone to his home with the deceased for one month.

7. On cross examination the accused said he did not have records to show that the deceased was sick with kidney problem. He said the deceased fell him down but denied that he kicked the deceased while down. He confirmed that he was drunk at the material time but denied that he was too drunk.

ANALYSIS AND DETERMINATION

8. I have considered evidence adduced and wish to consider whether the three ingredients for the offence of murder have been proved beyond reasonable doubt. The ingredients being
 - a) Proof of death.
 - b) Whether its accused who caused the death of the deceased.
 - c) Whether malice aforethought was proved against accused.

(a) Proof of death

9. The death of the deceased, Sammy Boit Kiprop, is not in dispute. This was confirmed by all the prosecution witnesses.

(b) Whether the Death of the Deceased Was Caused by an Unlawful Act of the Accused

10. The central issue for determination is whether the prosecution proved beyond reasonable doubt that the death was caused by an unlawful act or omission on the part of the accused.
11. The evidence of PW2 and PW3 places the accused and the deceased at the scene shortly before the deceased collapsed. PW2 testified that he witnessed the accused kick the deceased on the right side of the abdomen following a brief altercation. Upon being kicked, the deceased fell down, after which the two were separated. Shortly thereafter, the deceased complained of inability to urinate, started sweating, and developed visible abdominal swelling. PW3 corroborated this account and confirmed that prior to the incident, the deceased was not sickly or ailing.
12. Medical evidence is critical in determining causation. PW6, who conducted the postmortem, found massive internal bleeding, a ruptured bladder, and extensive soft tissue hematoma in the urinary system. He concluded that the cause of death was haemorrhage secondary to blunt abdominal injury. This medical finding is consistent with the eyewitness testimony regarding a forceful kick to the abdomen.
13. The defence suggested that the deceased suffered from a pre-existing kidney condition which may have caused or contributed to his death. However, no medical records were produced to support this assertion. Indeed, the accused conceded on cross-examination that he had no documentary proof of such illness. None of the prosecution witnesses who interacted with the deceased prior to the incident observed

any signs of ill health. The court therefore finds that the alleged kidney condition was not proved.

14. Even assuming that the deceased had a pre-existing medical condition, the law is settled that an accused person remains criminally liable where his unlawful act accelerates, aggravates, or precipitates death. The accused must take his victim as he finds him. The postmortem findings clearly demonstrate that death resulted from blunt abdominal trauma leading to internal bleeding. The assault by the accused was therefore a substantial and operative cause of death and the chain of causation was not broken.
15. From the foregoing, I find that the prosecution proved beyond reasonable doubt that the deceased died as a direct consequence of the unlawful assault by the accused.

(c) Whether Malice Aforethought Was Established

16. Malice aforethought is defined under section 206 of the Penal Code and may be inferred from factors such as intention to cause death or grievous harm, the nature of the weapon used, the manner of attack, and the conduct of the accused before, during, and after the incident.
17. In the present case, the evidence shows that the accused and the deceased were friends and had no prior grudge. The incident arose spontaneously following a minor disagreement while both had consumed alcohol. There is no evidence of premeditation, planning, or persistence of attack. The assault involved a single kick during a brief altercation and was not accompanied by the use of a weapon.

18. Further, both the prosecution witnesses and the accused himself confirmed that the accused and deceased had consumed alcohol at the material time. While intoxication is not a defence to criminal liability, it is a relevant factor in assessing whether the accused formed the requisite intention for murder. The circumstances of this case point to a sudden, alcohol fueled confrontation rather than a deliberate intention to kill or cause grievous harm.
19. The conduct of the accused after the incident, including leaving the scene and later presenting himself at the police station upon learning that he was being sought, does not demonstrate a guilty mind consistent with malice aforethought.
20. Taking all the circumstances into account, the court is not satisfied that malice aforethought was proved beyond reasonable doubt.
21. From the foregoing, I find that the accused unlawfully assaulted the deceased, thereby causing injuries that led to his death. However, the prosecution failed to establish the element of malice aforethought necessary to sustain a conviction for murder.
22. Accordingly, the offence of murder contrary to section 203 of the Penal Code is not proved. The evidence on record, however, discloses the offence of manslaughter.
23. **FINAL ORDERS:-**
 - a. I hereby find the accused guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the penal code and convict him accordingly.
 - b. Sentence after sentence hearing.

Dated and signed at **Nairobi** this 11th day of March 2026.



.....
R NGETICH

JUDGE

Dated, Countersigned and delivered at **Eldoret** this 17th day of March 2026.

.....
J.R. WANANDA

JUDGE

In the presence of:

Court Assistant - Brian Kimati

State Counsel - Kosgei

Accused - Present virtually in KABARNET COURT.

Ms Kosgei for DPP.

Chebii for Accused.