

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAPSABET
CRIMINAL DIVISION
CRIMINAL CASE NO. E021 OF 2024

REPUBLIC.....
.....**PROSECUTOR**

VERSUS

CHRISTINE
CHEPSIROR.....**1ST**
ACCUSED

JAVAN
TUWEI.....**2**
ND ACCUSED

ABIUD
RUTTO.....
3RD ACCUSED

ELPHAS
ROTICH.....**4TH**
ACCUSED

JUDGMENT

1. The information dated 16th September 2024 filed herein by the Republic complainant through the Office of the Director of Public Prosecutions invoked the charge of murder, Contrary to Section 203 as read with Section 204 of the Penal Code against **Christine Chepsiror, Javan**

Tuwei, Abiud Rutto and Elphas Rotich [herein, the First, Second Third and Fourth Accused respectively.]

2. It was alleged that on the 20th February 2024 at Olmaroroi Kaptich Location within Nandi County, the four Accused jointly with others not before court murdered **Brian Kiplagat** [deceased].

The prosecution case was that the deceased and his sister, **Scholastica Jesang [PW1]**, were on the material date heading to a sports event at a nearby secondary school with the deceased walking ahead of his sister when shouts of “*thief! thief! thief!*” rent the air allegedly being made by the First Accused **[Christine]**.

3. In response to the shouts a group of villagers appeared at the scene including sons of the First Accused and set upon the deceased who ran into a sugar cane plantation while the First Accused continued with her shouts and attracting more people to the scene including the Second Accused **[Javan]**. The Third Accused **[Abiud]**, son of the First Accused was already at the scene.

4. The villagers formed a big mob of people who entered the sugar cane plantation to fetch the deceased whom they found and assaulted on suspicion of being a thief amid his plea not to be killed. The weapon or objects used in the assault included sugar cane, fencing pole, stone and

spiked club used by the fourth Accused **[Elphas]** who was also in the mob of villagers.

5. After being assaulted and seriously injured by the mob the deceased was taken to hospital by his sister **[PW1]** on a motor cycle taxi [boda-bada].

The father of the deceased, **Joseph Bungei Kios [PW2]**, arrived at the scene after the deceased had been assaulted. He found the deceased lying down on the ground on his back and bleeding from the mouth and ears within the home compound of the First Accused.

6. The father learnt that the deceased had been assaulted by the mob of villagers for being a maize thief. He arranged for his daughter [PW1] to take the deceased to the nearby Kabiyeet Hospital from where he was transferred in an ambulance to Kapsabet Referral Hospital. It was **Evans Kiplagat [PW3]**, the boda-boda operator, who ferried the deceased to hospital on his motor cycle.

7. **Kenneth Kipchumba Boit [PW4]**, a resident of Olmaroroi had attending the spots event at the nearby school when he heard that a person had been assaulted and was lying on the ground near his farm. He proceeded to the scene within his sugar cane plantation and found the deceased lying on the grounds facing upwards with injuries on the forehead, but still alive. The parents of the deceased arrived at the scene and were heard by the

witness **[PW4]** lamenting that they had on several occasions warned the deceased against theft, but he failed to heed the warning.

8. The witness **[PW4]** called the area chief and reported the matter to him. Later, the chief convened a public meeting [Baraza] where a list of the people who participated in assaulting the deceased was discussed. Most of the named suspects were neighbours and included the four Accused herein. He **[PW4]** was also suspected and arrested together with the four accused, but was released along with others after recording his statement on the incident which he did not witness.

9. After the deceased succumbed to his injuries, the post mortem on his body was carried out by **Dr. Evan Kibiwot [PW5]** who thereafter compiled the necessary post mortem report **[P. Exhibit 1]** in which he opined that the deceased died from severe head injury due to repeated blunt force trauma.

The police investigations carried out by **PC Peter Kamau [PW6]** ended with the arrest and arraignment of the four accused in court for the present offence on account of their identification by the sister of the deceased **[PW1]** as having been part of the mob of villagers who subjected the deceased to mob justice or injustice by assaulting and fatally injuring him.

10. All the four accused denied the offence and continued to do so in their respective defence. The First Accused implied that she was implicated with the offence for no reason as she was never at the scene of the assault when it happened, she was attending to a sick neighbor called **Rael Chepsiror** when the incident occurred. She only heard about it from her son [Third Accused] when she returned home in the evening hours. She contended that she was not among the people who assaulted the deceased.

11. The Second, Third and Fourth Accused also implied that they were charged with the offence without good reason. Accused two indicated that he was in his farm on the material date and later went to clear the outstanding balance of the purchase price of a portion of land he purchased. He produced the necessary sale agreement **[D. Exhibit 2]**. He said that he returned to his home and at 3:00pm ventured into the market at the local trading centre near Olmaroroi Primary School. He later returned home and was informed by his children that a thief had been beaten by villagers. Seven [7] months thereafter, a group of police officers arrived at his home and arrested him for allegedly being responsible for the death of the deceased.

12. The Third Accused indicated that he was at the material time attending the sports event at the nearby

Olmatoroi Primary School when he heard students saying that a person had been beaten by a mob. He knew nothing about the incident, but was arrested after several months and taken to Kabiye Police Station where he recorded a statement.

13. The Fourth Accused indicated that he was at Kabiye on the material date selling a cow. Thereafter, he returned home and heard from his grand children that a person had been beaten up by villagers. He was much later on 10th September 2024, confronted and arrested by police officers for allegedly being a suspect in the death of the deceased.

14. Basically, the offence of murder occurs when a person intends to and causes the death of another person. The fact that the deceased was assaulted and fatally injured after being suspected of being a maize thief was an indication that those who assaulted him did so with the intention to cause him grievous harm and eventually his death.

As it were, the deceased fell victim to mob injustice meted out by fellow villagers who took the law into their own hands and became his prosecutors and judges in as much as they prosecuted and judged him on the basis of mere suspicion.

- 15.** The collective action of the villagers was not only premeditated, but also unlawful and placed them within the ambit of the offence of murder. They actually murdered the deceased when they assaulted and occasioned him severe head injury which led to his death. In fact, and in law the prosecution evidence remained undisputed with regard to the commission of the offence.
- 16.** The issue falling for determination by this court was whether the evidence led by the prosecution was sufficient and credible enough to establish and prove beyond reasonable doubt that the four Accused or any one of them were part and parcel of the mob of villagers who assaulted and caused fatal injury to the deceased. The legal obligation to prove the charge against them lay with the prosecution. It was not upon them to prove their innocence.
- 17.** The prosecution was therefore called upon to avail cogent and credible evidence capable of proving the charge against the four accused, hence disproving their respective defence and laying sufficient ground for their conviction by this court for the murder of the deceased.
- 18.** In the present case, the evidence the prosecution sought to rely on in proving the alleged identification of the Accused as having been part of the group of people who assaulted the deceased was that of the deceased's sister scholastic **[PW1]**. She was the sole witness of

identification against the Accused as her evidence in that regard was never corroborated by that of the other key witness such as the deceased's father **[PW2]**, the boda-boda rider **[PW3]** and the sugar cane farmer **[PW4]**. These witnesses arrived at the scene after the fact. They were therefore incapable of identifying the perpetrators of the offence at the time of its execution and if they purported to do so, then they merely relied on hearsay.

19. It is trite law that a fact can be proved by the evidence of a single witness although there is need to test with the greatest care the identification evidence of such witnesses especially where it is shown that conditions favouring a correct identification were difficult **[See, Ogeto Vs. Republic[2004] 2KLR 14 and Marube & Another Vs. Republic [1986] KLR 356].**

20. It is also trite law that in all Criminal Cases the burden remains with the prosecution to prove its case against an Accused Person beyond any reasonable doubt **[See, Mkendeswho Vs. Republic [2002] 1 KLR 461]** where the evidence implicating an accused person is entirely based on identification as in the present case, then such evidence should be absolutely watertight to justify a conviction and must be free from any possibility of error **[See, Kiarie Vs. Republic [1948] KLR 730].**

21. It is possible for a witness to be honest but mistaken on the identity of an Accused person. Indeed, Scholastica **[PW1]** was honest when she indicated that her deceased brother was suspected of being a thief and fatally assaulted by a group of Villagers while inside the sugar cane plantation where she did not venture as all the women were according to her, instructed to stay clear off the scene of the assault by one **Kibet**. The witness **[PW1]** also indicated that the mob of villagers was huge numbering more than forty [40] people as it was a market day.

22. Consideration being given to the circumstances alluded to herein above by the witnesses, **[PW1]** it was possible for her to be mistaken with regard to the four accused or any of them having been part of the actual people who assaulted the deceased. They may have been at the scene like all the other villagers in response to the alarm raised against the deceased, but this did not mean that they necessarily participated in the assault.

23. Regard being given to the fact that the mob of villagers was huge the conditions for identification of a specific individual as one of the actual assailants were difficult even though this offence occurred during daytime. Coupled with all that, the credibility of the key witness **[PW1]** on the identification of all or any of the Accused Persons was put into doubt by the fragmented,

contradictory and inconsistent nature of her evidence as exposed in her cross-examination by the Accused and indeed, in her examination in chief.

24. It would therefore follow that the prosecution evidence of identification against the four accused was never cogent nor credible to be relied upon for a safe conviction of the Accused.

Admittedly, the deceased suffered a gruesome death at the hands of a restless, hasty and unreasonable section of members of the public who were his village mates, but the allegation made by the prosecution through Scholastica [PW1] that the four Accused were part of that offending group of villagers was not proved beyond reasonable doubt.

25. It appeared that Scholastica [PW1] had a bone to pick with the Accused and in particular, the First Accused and her family for reasons that remained unknown and that the death of the deceased near the homestead of the First Accused provided sufficient opportunity for the witness [PW1] to have her “*revenge*” by way of this criminal justice process which has turned out to be a cropper.

26. Ultimately, this court finds that the prosecution has failed to discharge its burden of proof against the four

accused who must and are hereby adjudged **“NOT GUILTY”** as charged and acquitted accordingly.

Dated and Delivered this 2nd day of April, 2026

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