

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. 24 OF 2019

REPUBLIC
PROSECUTOR
VERSUS

PETER KIBET SANG1ST
ACCUSED

JOSPHAT BII KIPRONO2ND
ACCUSED

PATRICK KIPROTICH BETT3RD
ACCUSED

JUDGMENT

1. The three accused persons named above are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 Laws of Kenya.

2. The particulars of the offence are that on the 12th day of June 2019 at Chebirirbei village, Chebirirbei Sublocation in Belgut Sub-County within Kericho County, jointly with others not before the court, they murdered Eliud Cheruiyot Bett.

3. The prosecution called seven witnesses in support of its case. Each of the three accused persons gave a defence, with the 2nd and 3rd accused giving sworn testimony and the 1st accused giving unsworn testimony.

4. Upon the close of the defence case, the defendants filed written submissions through their advocates, M/s Mutai Kiprotich

& Co. Advocates. The submissions raised several issues which this Court has duly considered.

5. Having carefully considered the evidence on record and the submissions filed, the issue for determination is whether the prosecution has proven the essential elements of murder beyond reasonable doubt.

6. **PW1 - David Kipkorir Tonui** testified that on the night of 12th June 2019 at about 11:40 pm, he was returning from watching a football match when he heard sounds. He heard the voice of “Kiprotich” (the 3rd accused) say that Peter (the 1st accused) had stabbed the teacher, Eliud (the deceased). PW1 saw Peter with a knife. He asked what had happened and told them to take the deceased to hospital. He helped put the deceased onto a motorcycle. He stated that the 2nd and 3rd accused helped Peter perpetrate the murder. Under cross-examination, PW1 stated that he recognized the persons by their voices, that there was moonlight, and that Peter had a knife. He stated that Peter went towards a tea plantation after the incident.

7. **PW2 - Bernard Kiplangat**, a brother of the deceased, testified that on the same night at about 11:30 pm, the 3rd accused (Patrick) knocked on his door and told him they should take his brother to hospital because he had been stabbed. PW2 went to the scene where he saw a lot of blood. He later went to Sigowet Hospital where he found the 2nd accused (Josphat), the 3rd

accused (Patrick), and the deceased. The deceased was bleeding from his right side but did not disclose who stabbed him.

8. PW2 stated that they later arrested Peter who had two knives – one long and one short. PW2 identified Peter in court as well as those who assisted him in murdering the deceased. Under cross-examination, PW2 stated that when they arrested Peter, he had two knives but did not use them at that time. He stated that Josphat and Patrick had blood on their clothes and Peter had blood on his jacket.

9. **PW3 - Samuel Kipkemoi Langat** testified that on 13th June 2019, he was called by PW1 and told that the deceased had been stabbed. He went to PW2's place. He went to the scene and saw a lot of blood. Later, on the way to the hospital, they met Peter who said he was also looking for a motorcycle to go to the hospital. PW3 stated that Peter was arrested by hospital security and had a knife in his jacket. The other accused persons were also at the hospital. The deceased was already dead.

10. **PW4 - Samuel Koech**, father of the deceased, testified that he was called at midnight and informed that the deceased had been stabbed. He went to the scene and found blood on the road. He proceeded to Sigowet Hospital where he found the deceased being treated. The deceased had been stabbed on the left side of his chest. The deceased later died at 5:00 am. PW4 confirmed he was not an eye witness.

11. **PW5 - Dr. Kiprono Robert Koech** produced a post-mortem report dated 17th June 2019. He stated that the deceased had a stab wound measuring 2 by 2 centimetres on the left lung upper lobe, as well as injuries to the heart.

12. **PW6 - CPL Mike Kirui** testified that on 13th June 2019 at about 5:30 am, he was directed to go to Sigowet Hospital. He found that the deceased had succumbed to his injuries. He was informed that the suspect had already been arrested. He recovered two swords which were produced as exhibits. Under cross-examination, PW6 stated that the swords were handed over to him by security guards at the hospital.

13. **PW7 - Kennedy Kasivua** (Investigation Officer) testified that he proceeded to the scene at Chebirbei Market and saw clotted blood. He went to Sigowet Hospital where he found the deceased had passed on. He stated that during investigations, he confirmed that the 1st accused was in company of four other people who saw him stab the deceased. He stated that two swords were recovered, and he retrieved a green striped t-shirt from the 1st accused's house which had blood stains. He produced the t-shirt as an exhibit.

14. **DW1 - Peter Kibet Sang** (1st Accused) gave an unsworn testimony. He stated that on the material day, he arrived home at 3:00 pm, had lunch, and later went to the town center with a friend. They drank until about 9:00 pm. He left for home. On the way, he encountered a group of people. One of them asked him

the time. Shortly after, one of the men followed him, grabbed him by the neck, and accused him of being stubborn. A fight ensued. DW1 stated that the man slapped him and he fell into a ditch. DW1 said he had a knife for his own security.

15. He stated that later he learned the deceased had been injured. He helped put the deceased on a motorcycle. He denied knowing the deceased or having any quarrel with him.

16. **DW2 - Josphat Kiprop Bii** (2nd Accused) gave sworn testimony. He stated that he went to Chebirirbei Center at about 6:30 pm and met the deceased, who was his cousin. The deceased offered to buy him alcohol. They drank together with the 3rd accused (Patrick) at several bars until about 12:10 am.

17. When they were leaving, they met two people. The deceased asked them what they were doing there at night. The deceased then started screaming that he had been stabbed by Peter. DW2 stated that he requested the deceased to go to hospital. He confirmed that they took the deceased on a motorcycle, with the deceased seated in the middle.

18. **DW3 - Patrick Kiprotich** (3rd Accused) gave sworn testimony. He stated that he was riding his motorcycle when he met the 2nd accused and the deceased. They went to a club where he parked his motorcycle and drank together. They later moved to another club and then to Glado Bar where they drank until 12:00 midnight. They then took the motorcycle and headed home.

19. The defendants written submissions raised the following key arguments;

(a) That the prosecution had failed to prove the essential elements of murder beyond reasonable doubt, specifically both actus reus and mens rea.

(b) That there was no direct eyewitness testimony linking the 1st accused to the stabbing, as the deceased did not identify his assailant.

(c) That the evidence against the accused was purely circumstantial, and the prosecution had failed to establish a complete chain of circumstances pointing to the accused as the perpetrators to the exclusion of any other person, relying on *Musili Tulo v Republic* [2014] eKLR.

(d) That the 2nd and 3rd accused were intoxicated at the time of the incident, having been drinking with the deceased since morning, and therefore could not form the specific intention required for murder, relying on ***Anthony Ndegwa Ngari v Republic*** and ***Said Karisa Kimunzu v Republic***.

(e) That the 1st accused was also intoxicated, having been drinking with a friend, and thus could not form malice aforethought.

(f) That the 1st accused did not attempt to flee but remained at the scene and followed the deceased to the hospital, indicating no ill intention.

20. The defendants urged the Court to find that the prosecution had failed to prove its case beyond reasonable doubt and to acquit all accused persons.

21. The prosecution's case hinges on the evidence of PW1, PW2, and PW3, who were either at the scene or arrived shortly thereafter.

22. From PW1's testimony, it is clear that immediately after the incident, he heard the 3rd accused state that Peter had stabbed the deceased. PW1 saw Peter with a knife. PW1's evidence that Peter was present with a knife at the scene is consistent with the recovery of two knives (or swords) from Peter's possession shortly after the incident, as testified by PW2 and PW3.

23. PW2, the brother of the deceased, testified that the 3rd accused came to inform him that his brother had been stabbed. He later saw blood on the clothes of the 2nd and 3rd accused and on Peter's jacket. He also confirmed that Peter was found with two knives.

24. PW3 confirmed meeting Peter near the hospital and that Peter had a knife in his jacket.

25. The medical evidence from PW5 established that the deceased died from a stab wound to the chest, which penetrated the lung and injured the heart. The cause of death was consistent with the use of a sharp object such as the swords recovered.

26. The defence submissions argued that the evidence was purely circumstantial and did not meet the threshold set in **Musili Tulo v Republic** (supra). This Court notes that while there is no eyewitness who testified to seeing the actual stabbing, the evidence is not entirely circumstantial. PW1 heard the 3rd accused declare that Peter had stabbed the deceased. That declaration, made at the scene immediately after the stabbing, constitutes direct evidence of the 1st accused's culpability. Additionally, the 1st accused was found with two knives and blood on his jacket. These facts, taken together, leave no doubt as to the identity of the perpetrator.

27. The defence also submitted that the accused persons were intoxicated and therefore incapable of forming the specific intent required for murder. Section 13(4) of the Penal Code requires the Court to take intoxication into account for the purpose of determining whether the accused had formed any specific intention.

28. On this issue, this Court makes the following observations;

(a) The 1st accused, in his unsworn testimony, stated that he had been drinking until about 9:00 pm, approximately three hours before the incident. While he may have been under the influence of alcohol, his actions thereafter demonstrate an ability to form intent. He engaged in a physical altercation, produced a knife, and inflicted a fatal stab wound to the chest. He then left the scene towards a tea plantation before later reappearing. These

actions are not consistent with a person so intoxicated as to be incapable of forming malice aforethought.

(b) The 2nd and 3rd accused were admittedly drinking with the deceased throughout the evening. However, their intoxication does not negate their participation in a common enterprise. The defence of intoxication under Section 13(4) applies to the formation of specific intent. Even if they were too intoxicated to form the intent to kill, they are nonetheless criminally liable under the doctrine of common intention if they participated in an unlawful purpose whose probable consequence was the commission of murder. Their presence at the scene, their blood-stained clothing, and their actions in facilitating the departure from the scene all point to active participation.

(c) Moreover, none of the accused called any evidence to establish the degree of intoxication or that it had reached a level rendering them incapable of forming intent. The mere fact of having consumed alcohol is insufficient to invoke the defence under Section 13(4).

29. The defence further submitted that the 1st accused did not flee, indicating no ill intention. This Court notes that while the 1st accused initially went towards a tea plantation, he later reappeared near the hospital. His presence at the hospital does not negate the act of stabbing or the presence of malice aforethought. Many perpetrators remain near the scene of a crime, and such conduct does not, by itself, disprove intent.

30. From the totality of the evidence, the following findings are made;

(a) The deceased died from a stab wound inflicted on the night of 12th June 2019.

(b) The stabbing was done with a sharp object, specifically one of the swords or knives recovered.

(c) DW1 (Peter Kibet Sang) was identified by PW1 as the person who was holding a knife at the scene and was named by the 3rd accused as the one who stabbed the deceased. DW1 was also found in possession of two knives shortly after the incident, and his jacket had blood stains.

(d) The 2nd and 3rd accused were present at the scene, had blood on their clothes, and were in the company of DW1 at the time the deceased was stabbed.

31. The evidence against the 1st Accused is overwhelming. He was positively identified by PW1 at the scene with a knife. The words attributed to the 3rd accused (“Peter had stabbed the teacher”) constitute a contemporaneous admission against interest. 1st accused was found shortly after with two knives and blood on his jacket. The medical evidence confirms the cause of death was a stab wound. His defence of self-defence is not supported by the evidence; no injuries were reported on him, and his own testimony suggests he fell into a ditch, not that he was the one being attacked to the extent of needing to use lethal force. The defence of intoxication is not available to the 1st accused. His

actions before, during, and after the incident demonstrate a capacity to form the requisite intent. Stabbing a person in the chest with a knife or sword is an act committed with malice aforethought as defined under Section 206 of the Penal Code. I find that the 1st accused caused the death of the deceased by an unlawful act committed with malice aforethought. The prosecution has proven both actus reus and mens rea against the 1st accused beyond reasonable doubt.

32. The evidence against the 2nd and 3rd accused must be considered in light of the doctrine of common intention. Section 21 of the Penal Code provides;

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”

33. The 2nd and 3rd accused were in the company of the deceased throughout the evening, drinking together from approximately 6:30 pm until after midnight. They were present at the scene when the altercation occurred. PW1 testified that the 3rd accused announced that Peter had stabbed the deceased, indicating that the 3rd accused was aware of and participated in the unfolding events. Both the 2nd and 3rd accused had blood on their clothes, and they were actively involved in the immediate

aftermath, including facilitating the departure from the scene. Their conduct, viewed in its totality, demonstrates that they were not mere bystanders but active participants in a joint enterprise with the 1st accused. The fact that they drank with the deceased for several hours, were present when the stabbing occurred, had blood on their persons, and then assisted in removing the deceased from the scene is consistent with participation in a common unlawful purpose.

34. Regarding the defence of intoxication, the 2nd and 3rd accused have not demonstrated that their level of intoxication was such that they could not form the intention to participate in the common enterprise. Moreover, under the doctrine of common intention, it is sufficient that the unlawful purpose was formed and that the murder was a probable consequence of its prosecution. Their participation in the events leading up to the stabbing, their presence at the scene, and their conduct afterward establishes their liability under Section 21.

35. The doctrine of common intention under Section 21 of the Penal Code is well established.

36. The prosecution has established beyond reasonable doubt that the 2nd and 3rd accused formed a common intention with the 1st accused to prosecute an unlawful purpose, and the murder of the deceased was a probable consequence of that purpose.

37. Therefore, I find each of the accused persons guilty and hereby convicted for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

**Dated, signed and delivered at Kericho this 30th day
of March, 2026**

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J. K. SERGON
JUDGE

In the presence of:

C/Assistant - Rutoh/Naomi

Prosecutor -

Accused - Present in Person

Kirui for the Accused