

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL CASE NO. 23 OF 2018

REPUBLIC.....

PROSECUTOR

VERSUS

DENNIS KIPSANG NGENO 1ST

ACCUSED

GILBERT KIPLANGAT NGENO 2ND ACCUSED

JUDGEMENT

The Charges

1. Dennis Kipsang Ngeno (1st Accused) and Gilbert Kiplangat Ngeno (2nd Accused) were charged with the offence of murder contrary to **section 203 as read with Section 204 of the Penal Code** in two counts. The particulars were that on 8th

September 2018 at Mongokwo Village in Besiobei Sub-Location at Konoin Sub County within Bomet County, they murdered Erick Kipsang Teituk.

2. They were charged with the second count of murder contrary to **section 203 as read with Section 204 of the Penal Code.**

The particulars were that on 8th September 2018 at Mongokwo Village in Besiobei Sub-Location at Konoin Sub County within Bomet County, they murdered Josephat Cheruiyot Ngeno.

3. The Accused took plea before Muya J. on 29th October 2018 and pleaded not guilty. The case proceeded to trial where the Prosecution called eleven (11) witnesses and the Accused testified in person before they closed their case.

Summary of the Prosecution Case

4. The Prosecution's case was that on the material day (8th September 2018), the Accused cut the victims with a panga leading to fatal injuries. The Prosecution stated that the

Accused persons and the victims were step-brothers who had a land dispute. The Prosecution through Lily Cherotich (PW3) and David Rono Kipkoech (PW9) stated that the Accused chased the victims through the land while armed with pangas and used the same to inflict fatal injuries to the victims.

5. The Prosecution stated that the body was taken for post mortem examination and through Dr. Richard Kagili (PW6), the cause of death for the 1st victim (Erick Kipsang Teituk) was determined as trauma (multiple injuries) and hemorrhage (excessive bleeding) from a sharp object. The cause of death for the second victim (Josephat Cheruiyot Ngeno) was determined as multiple injuries and excessive bleeding secondary to a sharp object. The investigating officer (PW11) visited the scene, documented it and recovered exhibits which included a blood stained panga

6. The Accused were later arrested and charged with murder.

7. At the conclusion of the Prosecution case, this court ruled on 21st May 2025 that each Accused had a case to answer and put them on their Defences.

The Defence Case

8. The 1st Accused (DW1) gave sworn testimony and denied that he committed the offence. That on 8th August 2018 he reached home and was informed that his home and the fence had been damaged. DW1 further testified that as they were trying to reconstruct the house, the victims came and attacked them.

9. It was DW1's testimony that the victims were his step brothers and lived in Olenguruone.

10. The 2nd Accused (DW2) gave sworn testimony and denied committing the offence. DW2 testified that on the material day, they were rebuilding DW1's house, people with jembes told

them that they had been waiting for them. DW2 testified that they ran with DW1 and did not meet for one month and when he went to report the matter to the police, he was arrested. DW2 further testified that he did not know that the victims had passed on.

Ingredients of the offence

11. The offence of murder contains two elements, the *actus reus* encapsulated in **Section 203 of the Penal Code** and the mens rea provided for in **Section 206 of the Penal Code**.

12. **Section 203 of the Penal Code** provides: -

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

13. **Section 206 of the Penal Code** provides: -

Malice aforethought shall be deemed to be established by evidence proving anyone or more of the following circumstances—

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

14. For the offence to be established, the Prosecution must prove the above elements beyond reasonable doubt. The Court of Appeal in **Chiragu & another vs Republic (Criminal Appeal 104 of 2018) [2021] KECA 342 (KLR) (17 December 2021) (Judgment)** held: -

“The prosecution in an information of murder has the singular task of proving the following three ingredients in order to secure a conviction; that the death of the deceased occurred; that the death was caused by an unlawful act of commission or omission by the accused and that the accused had malice aforethought as he committed the said act.”

The fact of death

15. There is no doubt that the 1st victim (Erick Kipsang Teituk) died on the material day being 8th September 2018. David Rono Kipkoech (PW9) and No. 82137 Cpl Tyrus Gitonga (PW11) all

testified to finding the 1st victim's body on the ground. A post-mortem was conducted on the 1st victim's body at Kapkatet Sub County Hospital and the respective report was exhibited. The testimonies of PW8 and PW11 as to the fact of the 1st victim's death were uncontroverted upon cross examination.

16. Dr. Valentine Mbithi (PW8) testified in regards to the 2nd victim (Josephat Cheruiyot Ngeno). PW8 testified that the 2nd victim was resuscitated after he had lost a lot of blood but unfortunately passed on immediately after an operation. This testimony was uncontroverted upon cross examination.

17. It is my finding from the above that the fact of death of both victims was established.

Cause of death

18. Evidence on the causes of death was given by Dr. Richard Kagili (PW6). He testified that the 1st victim (Erick Kipsanga Teituk) had multiple wounds on the head, left shoulder, right knee,

both rams, fractures on the head, rights bones and that the fracture on the head penetrated through the dura to the brain. PW6 determined the cause of death as trauma (multiple injuries) and hemorrhage (excessive bleeding) from a sharp object. He produced a Post Mortem Report for Erick Kipsang Teituk as **P. Exh 1.**

19. In regards to the 2nd victim (Josephat Cheruiyot Ngeno), PW6 testified that the body had a decapitated right foot, multiple fractures on the skull, left hand, 3 linear compound fractures and the fracture on the head penetrated through the dura to the brain. PW6 determined the death was caused by multiple injuries and excessive bleeding secondary to an assault by a sharp object. He produced a Post Mortem Report for Erick Kipsang Teituk as **P. Exh 2.**

20. I have looked at and considered the Post Mortem Reports (P. Exh 1 and 2) and I have noted that the findings contained in the Post Mortem Reports mirrored the testimony of PW6. I have

found no reason to doubt the professional opinion of PW6 on the causes of death of both victims.

Whether both Accused caused the death of the victims

21. Having gone through the testimonies, it is clear to this court two witnesses witnessed the commission of the offences. Lily Cheruiyot (PW3) testified that on the material day, she saw both Accused armed with a panga each and that the Accused were chasing both victims. PW3 further testified that after a while, the 2nd victim, Josephat Cheruiyot Ngeno stumbled and fell and the 2nd Accused, Gilbert Kiplangat Ngeno begun cutting the 2nd victim. When PW3 was cross examined, she reiterated her testimony that the Accused chased the victims while armed with pangas and that the 2nd Accused cut the 2nd victim who was lying on the ground.

22. David Rono Kipkoech (PW9) testified that on the material day, he saw the 2nd victim being chased by the 2nd Accused while

armed with a panga. PW9 further testified that he saw the 1st Accused, Dennis Kipsang Ngeno cutting the 1st victim, Erick Kipsang Teituk and when he saw him, the 1st Accused ran away. PW9's testimony was uncontroverted upon cross examination.

23. Edna Chepkorir Maritim (PW4) testified that on the material day, she heard screams and thereafter met the 1st Accused carrying a blood stained panga. PW4 testified that she took the panga and gave it to Charles (PW2) and the 1st Accused went into hiding. Charles Kipkirui Korir (PW2) testified that PW4 gave him the panga and he handed it over to the police.

24. No. 82137 Cpl Tyrus Gitonga (PW11) who was the investigating officer testified that he was given a blood stained panga at the scene and forwarded it for analysis. Richard Kimutai Langat (PW7) who was a Government Analyst testified that he received a blood stained panga and blood samples of the victims and the Accused. PW7 produced a Government Analyst Report as **P. Exh 5**. I have looked at the report and it stated

that the blood stains on the panga had DNA profiles of both victims but no DNA relationship with both Accused. From the above summation, it is my finding that the bloodied panga was the murder weapon. I say so because it corresponds to the findings in the Post Mortem Reports which concluded that the deceased's' hemorrhage was caused by a sharp object.

25. I have paid due regard to the Accused's Defences. In his sworn defence, the 1st Accused (DW1) denied committing the offence and testified that it was the victims who were armed and attacked them (DW1 and DW2). When DW1 was cross examined, he testified that he did not know who killed the victims. I have considered this defence and it is my considered view that it was a mere denial. It did not shake the Prosecution's evidence which established that DW1 was placed at the scene of the offence by two eye witnesses (PW3 and PW9) who all saw DW1 cutting the 1st Accused Erick Kipsang Teituk with a panga. The bloodied panga was recovered by

DW1's grandmother (PW4) and when it was presented for forensic analysis through the investigating officer (PW11), it was established that the blood on the panga had a mixed DNA profile of both victims.

26. The 2nd Accused (DW2) gave a similar testimony to DW1 and further testified that he did not know who killed the victims. When DW2 was cross examined, he reiterated that they had gone to construct the deceased's house and did not know who killed the victims. I have considered this defence and it is my considered view that it was a mere denial. It did not shake the Prosecution's evidence which established that DW2 was placed at the scene of the offence by two eye witnesses (PW3 and PW9) who all saw DW2 cutting the 2nd Accused Josephat Cheruiyot Ngeno with a panga. The bloodied panga was recovered by DW2's grandmother (PW4) and when it was presented for forensic analysis through the investigating officer (PW11), it was established that the blood on the panga had a mixed DNA profile of both victims.

27. Flowing from the above, it is my finding that the evidence against both Accused was overwhelming and cogent. It points unerringly to the guilt of both Accused and no one else.

Whether the Accused acted with malice aforethought.

28. I have already set out the circumstances under which malice aforethought may be inferred under **section 206 of the Penal Code.**

29. The Court of Appeal in **Roba Galma Wario v Republic [2015] KECA 521 (KLR)** held: -

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”

30. In **Bonaya Tutu Ipu & another v Republic**
[2015] KECA 335 (KLR), the Court of Appeal held: -

“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of Chesakit v Uganda, CR App No 95 of 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in Rex v Tubere s/o Ochen [1945] 12 EACA 63, the former

Court of Appeal for Eastern Africa stated thus on the issue:

It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick.....” (Emphasis mine)

31. Similarly, the Court of Appeal in **Waweru vs Republic (Criminal Appeal 98 of 2020) [2023] KECA 622 (KLR) (26 May 2023) (Judgment)** held: -

“In the case of Nzuki v Republic [1993] eKLR, this court defined malice aforethought as:

“...a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result. See the case of Regina v Vickers, [1957] 2 QB 664 at page 670. An intention connotes a state of affairs which the person intending does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. See the case of Conliffe v Goodman, [1950] 2 KB 237.”

In the same case, the court went on to state:

“Before an act can be murder, it must be aimed at someone and in addition it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:

i.The intention to cause death;

ii.The intention to cause grievous bodily harm;

iii.Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from these acts, and commits those acts deliberately and without lawful excuse the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed.

Without an intention of one of these three types, the mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder...."

(Emphasis mine)

32. I have looked at the evidence as a whole and the circumstances under which the victims met their deaths. The causes of death as I earlier found were multiple injuries and hemorrhage secondary to assault with a sharp object. The Post Mortem reports indicated that the victims suffered among them multiple skull and compound fractures on their heads. The nature and severity of the injuries indicated a use of force by both Accused. In my view, the Accused action of striking the victims on their heads clearly pointed to an intent to kill. By choosing to strike the heads, the Accused must have known that their actions would lead to the victims' deaths. It is my finding therefore that both Accused possessed malice aforethought when they killed the victims.

33. In the final analysis, it is my finding that the Prosecution has proved its case against the Accused to the required legal standard. Each Accused is accordingly convicted of the murder in both the 1st and 2nd counts.

Judgement delivered, dated and signed at Bomet this 13th May, 2026.

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Judgement delivered in the presence of:

Mr Ayekha for the State

1st and 2nd accuseds

N/A for Mr Mugumya for the Accuseds

Siele/Susan (Court Assistants).

ORIGINAL