



**REPUBLIC OF KENYA**

**IN HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL CASE NO.46 OF 2003**

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

**Versus**

**WILLIAM KIPKALIA CHEMASE.....ACCUSED**

**JUDGMENT**

**WILLIAM KIPKALIA CHEMASE** has been charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code Cap 63 of the Laws of Kenya.

The particulars of the offence are that on 19/11/2002 at Kimoning farm in Uasin Gishu District of the Rift Valley Province of Kenya he murdered Margaret Jepchumba Kiplagat.

The brief facts of the case are that Margaret who had separated from her husband, later teamed up with the accused, with whom she lived with as man and wife, at the home of her parents for about a year. The two set off from her parents home on 15/11/2002, and arrived at the home of one Kaith Kiprop Chemase ('Kaith'), who is the brother of the accused, on 17/11/2002 at about 7 p.m. they were accompanied by a 3 years old child. The accused, Margaret and the child spent the night in Kaith's kitchen and were joined for breakfast by their hosts next morning after which Kaith, Margaret and the accused set out to work in the fields where they harvested maize. Rose who is the wife to PW1 testified as PW3. she confirmed the visit and recalled how the three visitors spent the night in the kitchen, while she retired with her husband in the main house, that after breakfast she left the three at about 8.30 a.m., as she went to tend to her tasks, but on her return home at about 10.00 a.m., she had found the child outside the homestead when she returned at 10.00 am; that they walked back in to the compound; and she headed for the kitchen, but that as she entered the kitchen, she heard Margaret screaming. She then saw Margaret lying on the bed as the accused hit her on the legs with a 3 foot long metal bar. She also testified how she had pleaded with the accused to stop it, but that he did not answer her, nor did he heed to her pleas. She left the kitchen as he continued beating Margaret, and as she left the compound she started to scream. A few people came to find out what had happened, but she did not talk with them; they did not go to the kitchen; that the accused later went to her and told her that he "*had finished her*", and that he "*was going to report the matter to the Police at Iten*". It was her evidence that the accused who was in a bad mood appeared to be very annoyed. She left to inform her husband of the incident.

The body of Margaret Jepchumba Kiplagat ('Margaret') was found lying on a bed in the kitchen of his elder brother's home on the morning of 19/11/2002, where the accused and the deceased had spent a night while to the said home. I shall now refer to William Kipkalia Chemase as 'the accused'.

According to Prof. Kozlova (PW5) who conducted the postmortem on Margaret's body, the skull was severely fractured and brain washaeorrhaged; there was laceration to the brain tissue over a wide area and the neck was also damaged with ruptured great blood vessels. The doctor also noted fracture of the tibia and fibula, soft tissue injuries all over the body, a wound the forearm, which resembled a defence wound, and in her view, Margaret had probably tried to ward off a blow. In her opinion that cause of death was blunt injury to the head neck and limbs, and that the object used was blunt, which could have been a metal bar.

The State called nine witnesses to prove its case against the accused.

The accused denied the offence and gave an unsworn statement of defence. He stated how he had shared breakfast with Margaret, PW1 and PW3 on 19/11/2002, after which he had gone to work in the fields with Margaret; that they consumed busaa as they worked; that PW1 passed by at 8.30 am while on his way to Kapsonui for more busaa, but joined them later after which they all worked until 10.00 am, when PW3 left to go and brew some busaa in his other brother's home which was about 1 km away leaving them as they started ferrying the maize which they had harvested, to PW1's home at 11.30 am, and that as she carried the maize up a ladder, Margaret slipped and fell on some stones, as a result of which she sustained serious injuries, and that since she could not wake up, and was bleeding from the head, he had to carry her to the house after which he rushed to look for a vehicle so that he could have her moved to the hospital; but that he could not find a vehicle. He returned home only to find that Margaret had died, a fact which shocked him; that he decided to lock up the house where her body lay and to report the matter to the police at Moiben where he arrived at 3 pm after which he was placed in custody. He said that he loved his wife with whom he had lived happily for a year. He denied the existence of an iron bar at the scene.

Kaith Kiprop Chemase ('Kaith/PW1'), testified how the accused visited him on 17/11/2002 at about 7 p.m.; that he was accompanied by Margaret whom PW1 he had not met before but who he later learnt was a wife to the accused. They all retired after dinner. PW1 left his wife with the two at home as he left for work early next morning, but at 11.00 am his wife went to his place of work and informed him that the accused had killed Margaret. He went to the scene where he found the body, which lay on a bed in the kitchen where the two had spent the night. He noticed that Margaret's head had been smashed right side. He also testified that he saw a metal bar on the bed, and that the accused was not at the home then. He nevertheless proceeded to Eldoret Police Station where he reported the matter.

**The officer who investigated the crime and later charged the accused (PW9) testified and told the court how he had visited the scene from where he recovered the metal bar which lay next to Margaret's body and which he produced as exhibit 10.**

Mr. Chepkwony who appeared for the accused pointed out that his client had explained the circumstances that led to Margaret's death, and it was his submission that the evidence by PW1 and PW2 clearly shows that the accused had a good relationship with his wife; that during their stay at Kaith's home, they had worked together, and that PW2 and PW3 had also confirmed the fact that the two were close, and that there were no signs of animosity between the two, and that in the circumstances, the State had failed to establish that the accused would have had any motive to kill Margaret, or that he participated in the assault which caused the death. It was also his submission that the alleged murder weapon, which was a metal bar which was produced as an exhibit had no blood stains, which would indicate that it was not the alleged murder weapon, and further the fact that the accused had attempted to save Margaret's life and had gone to report her death at the police station was a clear indication that he had no intention to kill her nor was he involved in her death. In his view there was nothing to link him with her death.

The learned State Counsel Miss Oundo was of a different view. She urged the court to find that the State had established its case beyond reasonable doubt in that cause of death had been established by PW7 and PW5; that the deceased died through an unlawful act, which act was established by PW3 who witnessed the accused who was then armed with a metal bar, assault Margaret. It was her submission that PW3 could not have mistaken the identity of the accused person as he was the elder brother to her husband, and on the same token she knew Margaret well, that the evidence of prosecution witnesses 1, 3, 5, 7 and 9 confirmed that the deceased had suffered severe injuries on her

body which led to her death, and that in the circumstances, the second ingredient had been discharged by the prosecution. She urged the court to find that his defence was a mere denial, and further that the State had established its case beyond reasonable doubt.

I have considered the evidence on record, have taken into account the exhibits which were produced by the prosecution and there is no doubt in my mind that Margaret succumbed to the injuries which she sustained after beating with the metal bar, which was produced an exhibit. I am convinced that those injuries could not have been sustained after a fall. In any event the post mortem report says it all. Secondly, the injuries that she sustained were visibly clear from exhibits 1 to 6, which were produced by Police Inspector Isaiah Ngetich (PW7) of the Police scenes of crimes office, who also testified that he had seen a metal bar at the scene, which was captured in the exhibits.

The issue for determination would be whether the injuries were inflicted by the accused person, and if so whether the charge against him can lie.

Rose gave clear evidence of how she witnessed the assault, how she requested the accused to stop it, and how he refused to stop. I found her to be a reliable witness, whose evidence stood firm, and I tend to believe that the accused inflicted the fatal injuries upon Margaret.

The assessors have returned a verdict of guilty and I readily agree with them, for in my view, there is ample and corroborated evidence to prove that the deceased succumbed to severe bodily injuries. I am also convinced that at the time when he inflicted the fatal injuries, the accused had formed malice aforethought, for he must have known that his assault upon Margaret with the metal bar would cause her grievous harm, which harm would have led to her death. His evidence that they had consumed busaa earlier that morning would not afford him a defence of intoxication simply because he was not able to demonstrate that he was so intoxicated that he had no control of his physical or mental faculties, for here is a man who alleged that he carried Margaret from where she had allegedly fallen, placed her on the bed in the kitchen, who then went to look for a vehicle to take her to the hospital; that he later went to the Police Station to report her death. I am afraid his actions can not be said to have been consistent with the actions of an 'intoxicated person' who would qualify for the defence of intoxication. His claims that Margaret's death was as a result of a fall cannot lie either as the findings of the doctor who performed the autopsy was very clear, for in her opinion, the cause of death was blunt injury to the head neck and limbs and that the object used was blunt, which could have been a metal bar.

All in all, I find that the State had been able to prove its case beyond reasonable doubt, and I do in the circumstances find that William Kipkalia Chemase is guilty of the murder of Margaret Jepchumba Kiplagat and I convict him accordingly.

Dated and delivered at Eldoret this 11<sup>th</sup> day of January 2011.

**JEANNE GACHECHE**

**Judge**

In the presence of:

For the State – Mr. Chirchir

For the accused – Mr. Chepkwony

The accused person present

Court Clerk - Collins



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