



**Republic v Lokor (Criminal Case E016 of 2021)  
[2023] KEHC 2874 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2874 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL CASE E016 OF 2021  
JK SERGON, J  
MARCH 30, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MICHAEL LOKOR ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Particulars of the offence are that, the accused on October 30, 2021, at Kakuma Refugee Camp in Turkana West Sub-County within Turkana County murdered Lokinei Lometo Marko.
2. The accused pleaded not guilty to the charge and the prosecution called Six (6) witnesses to prove its case.
3. Losuru Albino (PW1) a friend to the deceased. He stated that he lives in Kakuma 3, Zone 2. He stated that he and the deceased were good friends and grew up together. PW1 stated that he knew accused person herein Michael Lokor, he was a regular visitor to his house and they used to play in the same football club. He testified that on October 29, 2021 at about 1100 Hrs he was at his home asleep whilst in the company of the Lometo Marko (deceased), Lokale Lopir, Lokitoe Lotabo, Elliye Natiam and Amos Lokale when the accused person came armed with a panga, which he used to cut the deceased on the head, shoulder and hands, the deceased was about 2 meters from him and Lokale flashed his torch and PW1 was able to identify the accused person. PW1 further testified that the accused person fled the scene whilst he and his friends attended to the deceased. PW1 and his friends reported the incident to security personal and took the deceased to clinic 7 for treatment, the decease died on arrival at the hospital. On cross examination, he stated that he was able to identify the accused as the perpetrator when a torch was flashed at him.



4. Mark Wasike (PW2) stated that he lives in Kakuma 3, Plot 12, Zone 2 and that the deceased was a coach in their team known as Koten F.C. whereas the accused was the captain of their team since 2021. He testified that on October 29, 2021, he was at home, he and his friends Albino Losuru, Amos Lokalio, Lotabo Lopir, Elliye Natiam and Amos Lokale had supper, took their mattresses outside and slept. He testified that while they were asleep, he woke up after he heard some commotion. Amos Lokale flashed his torch as it was dark and it was then PW2 saw the accused with a panga. PW2 and his friends pursued the accused who fled the scene, when they went back to the scene they took the deceased to hospital and he was pronounced dead on arrival. On cross examination, he stated that he did not witness, the accused cut the deceased. On re-examination, he stated that he managed to see the accused person as he fled from the scene.
5. Lokale Lopir (PW3) stated that he lives in Kakuma 3, Plot 12 Zone 3 and that both the deceased and the accused persons were well known to him. PW3 testified that on October 29, 2021 they were asleep outside whilst in the company of many young boys, at around 1100 Hrs the accused came and cut the deceased with a panga on the head, shoulder and back. PW3 acted quickly and flashed his torch and saw the accused running away. He further testified that that they made a report with security personnel after the accused escaped and that he remained with the deceased until the police took his body to the mortuary. On cross examination, he stated that he was able to identify the accused as he was fleeing from the scene when he flashed his torch.
6. Lokitoe Lotabe (PW4) stated that he knew both the deceased and accused persons and testified that on the night of October 29, 2021 at 1100 Hrs, they heard a commotion, Lokale flashed his torch and PW4 was able to identify the accused who was holding a panga menacingly and he threatened those flashing their torches. He stated that they took the deceased to hospital and he was pronounced dead on arrival. On cross examination, he stated that he was able to identify the accused after Lokale flashed his torch.
7. Charlope Kakozi (PW5) stated that he lives in Kakuma 3 where he provides security. He testified that on the night of October 29, 2021, he was asleep when three people came calling out

“security, security... someone has been killed”

he rushed out and found someone lying on a mattress bleeding profusely, he called for an ambulance and the injured person was taken to clinic 7, he later on learnt that the person who was taken to hospital had died. On cross examination, he stated that he was not at the scene of crime hence could not tell who assaulted the deceased.

8. PC Earnest Chula No 109603 (PW6) stated that he is attached to Turkana Sub County and was the investigating officer in the matter. He testified that on October 29, 2021 at 1130 Hrs received a call from his colleague CPL Molu and proceeded to the secondary scene at clinic 7 within Kakuma Refugee Camp where they found the deceased soaked in blood, he had injuries on the head and shoulder and produced photographs with the said injuries therein as exhibit 1 (a) – (d). He further testified that the body was taken to the mortuary for preservation and he conducted further investigations into the incident. He confirmed that the assault weapon was never recovered and that the accused and deceased were friends and there were no differences between the two. He further stated that the body was taken to Lodwar County Referral Hospital and a post mortem conducted on November 2, 2021, that further that he was in attendance. The post mortem showed that the deceased died due to severe injury due to the assault, PW6 produced the post mortem report as exhibit 2. On cross examination, he stated that he did not find the accused at the crime scene rather he recorded witness statements of those present during the assault. He confirmed that he did not recover the weapon and that the accused surrendered himself to the police.



9. When the accused was placed on his defence, he elected to give an unsworn testimony with no witnesses to call. In his defence, the Accused stated that he and the deceased had a quarrel, the deceased had provoked him and whilst in a heated argument the accused pushed the deceased and he fell down and was cut by a panga.
10. At the close of the case, neither the prosecution nor the defence counsel wished to put in any submissions.
11. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
12. The offence of murder is provided for in section 203 of the *Penal Code* that provides as follows;
 

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
13. The Court of Appeal in *Joseph Gitbua Njuguna v Republic* [2016] eKLR outlined the ingredients of the offence of murder and stated that;
 

“Under section 203 of the *Penal Code*, any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. It is clear from this section that there are three elements which the prosecution must prove beyond reasonable doubt to secure a conviction for the offence of murder. These are;

  - (a) the death of the deceased and the cause of that death;
  - (b) that the appellant committed the unlawful act which caused the death of the deceased;
  - (c) and that the appellant had harboured malice aforethought.

See *Milton Kabulit & 4 others v Republic* [2015] eKLR.”

#### **a. Death of the Deceased**

14. On this issue, the prosecution proved that the deceased died following an assault, PW6 produced the post mortem report as exhibit 2, the report indicated that the cause of death was severe head injury due to assault.

#### **b. Unlawful act which caused death of the deceased**

15. On this issue, the prosecution availed several witnesses PW1 – PW4 were at the scene of crime at the material date and time. PW 1- PW 4 recognized the accused person as the perpetrator, they all stated that the accused was a person well known to them. The difference in approach between identification and recognition was expressed thus by Madan, JA in *Anjononi and others v Republic* [1980] KLR;
 

“... This, however, was a case of recognition, not identification, of the assailants; recognition of an assailant is more satisfactory, more assuring, and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other.”
16. PW1 testified on the material night at around 1100 Hrs after he woke up following a commotion, using the light from a torch lit by Lokale PW3, he saw accused person armed with a panga, which he used to cut the deceased on the head, shoulder and hands, the deceased was about 2 meters from him.



### c. Malice aforethought

17. For the charge of murder to succeed, it must be proved that they acted with malice aforethought. Section 206 of the Penal Code provides circumstances from which malice aforethought may be inferred, these are;

- “(a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
- (b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused.
- (c). An intent to commit a felony.
- (d). An intention to facilitate the escape from custody of a person who has committed a felony.”

18. In order to determine whether the accused person had malice aforethought, the same can be inferred by either direct evidence or indirect evidence (surrounding circumstances) depending on the facts of each case at the trial. The former East African Court of Appeal in the case of Rex v Tubere S/O Ochen [1945] 12 EACA 63 observed as follows;

“an inference of malice aforethought can be established by considering the nature of the weapon used in causing death, the number of injuries inflicted upon the victim, the part of the body where such injury was inflicted, the manner in which the weapon was used, and the conduct of the accused before, during and after the attack.”

19. In the instant case, malice aforethought can be inferred from both direct evidence namely the eye witness accounts and indirect evidence to wit nature of the weapon, the nature of the injuries suffered by the deceased that the assault was intended to cause death or grievous harm and therefore malice aforethought can be inferred under section 206 (b) of the Penal Code.

20. I find the defence put forward by the Accused Person namely:- Michael Lokor to be a mere denial that does not displace the prosecution’s case. The prosecution has in my view proved its case against the accused beyond reasonable doubt. Consequently, the accused is found guilty for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He is hereby convicted.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF MARCH, 2023.**

.....

**J.K. SERGON**

**JUDGE**

In the presence of:

C/Assistant - Chepkoech

Maryann Kariuki holding brief for Lele for the Accused

Kakoi for the State

Accused – Present in Prison.

