



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRC NO. 8 OF 2018

PROSECUTOR.....REPUBLIC

VERSUS

SAMUEL MUGIE LEBOO.....ACCUSED

JUDGMENT

The accused, **SAMUEL MUGIE LEBOO**, was charged with the offence of **MURDER** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were that on 4th March 2018, at Tamu Centre in Muhoroni Sub-County, within Kisumu County, the accused unlawfully murdered **JOHN LEMISHEN KISOKUN**.

1. At the trial, the prosecution called seven witnesses.
2. And when the accused was put to his defence, he gave sworn testimony but did not call any other witness.
3. **PW1, SHARON ANYANGO OTIENO**, testified that she was a neighbour to the accused, who lived together with Anthony and a third man.
4. **PW1** testified that the accused had been her neighbour for about one month prior to the incident which gave rise to this case. She said that when the 3 neighbours moved in she was already living in her house.
5. On the material day, **PW1** heard her neighbours arguing, inside their house. However, she neither knew nor understood the language that was being used during the argument.
6. At that time, **PW1** was doing some washing. And when she was through with the said washing, **PW1** saw the accused holding a knife. This is what she said;

“The door to their house was open.

He came out, and stood next to a salon. He was still holding the knife.”

7. Whilst the accused was standing outside their house;

“The other 2 people remained inside the house. I heard one person trying to stop the other from going outside their house.”

8. According to this witness, the person who was trying to leave the house is called Anthony; and he had a knife.
9. During cross-examination **PW1** said that at the material time, she saw one of the 3 men who was trying to stop one of the others from coming out of the house.
10. **PW1** went on to testify as follows;

“I do not know who was fighting who.

I did not see any of them stabbing any other. I did not see any of them bleeding.”

11. **PW2, DAN ODHIAMBO NYANDO**, is a businessman who lives in Tamu.

12. He said that at about 6.30pm, on the material day he was at his business premises when **PW1** arrived there, and alerted him about a fight.

13. When **PW2** arrived at the scene, he says that he found 3 Maasai men; and that 2 of the said men were fighting whilst the third man was trying to separate them.

14. **PW2** identified the accused as being one of the 2 men who had been fighting.

15. However, when still giving further evidence-in-chief, **PW2** said;

“I did not see them fighting, but they were engaging each other in verbal exchanges in their mother-tongue.”

16. During cross-examination, **PW2** said that he did not understand the Maasai language; which is the language that was being used during the verbal exchanges. He also reiterated that he did not see any of the men inflicting injuries on any of the other men.

17. **PW3, JARED ODHIAMBO NGESA**, is a teacher, who resides in Tamu.

18. On the material date he arrived at the Tamu Centre at about 7p.m.

19. Immediately after he had parked his Suzuki Vehicle, a man approached him and asked him to help by transporting an injured person to hospital.

20. **PW3** rushed the injured man to the Muhoroni Sub-County Hospital. A Medical Officer examined the injured man and then advised that he should be taken to Kisumu.

21. However, whilst **PW3** was still trying to help in raising funds which could be utilized in fueling the ambulance that was to take the injured man to Kisumu, the man succumbed to his injuries.

22. **PW3** helped in transporting the body to the mortuary at the Catholic Hospital, Muhoroni. He then drove back to Tamu.

23. According to him, the accused was arrested by two Maasai men, who then handed him over to the police.

24. Finally, **PW3** reiterated that he did not see the accused stabbing the deceased.

25. **PW4, CPL FREDRICK ONSEMBE**, was attached at the Muhoroni Police Post.

26. When **PW3** was ferrying the injured man to the Muhoroni Sub-County Hospital, **PW4** was on duty at the Police Post.

27. After the injured man was pronounced dead, at the hospital, **PW4** escorted the body to the mortuary. Later, **PW4** accompanied the **OCS** to Tamu.

28. According to **PW4**, the accused was arrested about 2 kilometres away from Tamu Centre, whilst he was running away.

29. After being arrested, the accused was taken back to the house where he used to live with the deceased.

30. Inside the house, the police recovered;

(i) A sword

(ii) A rungu; and

(iii) A twisted metal bar.

31. It was the testimony of the arresting officer that all the 3 recovered items could have been used to attack the deceased.

32. Upon cross-examination, **PW4** said that when he found the accused at Tamu Centre, the accused had already been arrested and his hands had been tied-up.

33. **PW5, P.C. BRENDA KOECH**, was attached to Muhoroni Police Post.

34. She was present at the St. Vincent Hospital Mortuary, Muhoroni, when the doctor conducted a post-mortem examination on the body of the deceased.

35. She testified that the deceased had a stab wound on the lower part of his chest.

36. **PW5** did not see any other injury on the body. However, after opening the body, the doctor talked about “*massive internal bleeding.*”
37. **PW6, DR. LUCY OMBOK**, was a medical doctor based at the Jaramogi Oginga Odinga Teaching & Referral Hospital (JOOTRH), Kisumu.
38. She had worked at Muhoroni for 4 years, where she worked with **Dr. WESLEY ROTICH**.
39. **PW6** produced the Post-Mortem Report which had been prepared by Dr. W. Rotich. She testified that the cause of the death of John Lemishen Kisugun was severed internal bleeding due to a penetrating stab wound to the chest.
40. Apart from the stab wound, the deceased had 2 bruises on his left forearm.
41. **PW7, P.C. JAPHEP KIMUTAI** was the **DCI** Muhoroni at the material time. He was the Investigating Officer in this case.
42. He testified that the accused was arrested by members of the public.
43. His investigations revealed that the accused stabbed the deceased using a sword.
44. Prior to the incident, the deceased and the accused are said to have been at a bar. Whilst at the bar, whose name was not disclosed, an argument erupted after the accused asked the deceased why it is he (the accused) who always used to prepare food.
45. During cross-examination, the Investigating Officer said that he did not interview any of the other patrons at the bar, or even the persons who were working at the said bar.
46. His testimony was that it is **PW3** who informed him that the deceased and the accused had a quarrel whilst at the bar.
47. His further testimony was that the exhibits, (being the sword, rungu and twisted metal bar) belonged to the accused.
48. He said that the exhibits had blood stains; and that he concluded that the stains were of human blood;
- “..... Because of what happened.”**
49. After **PW7** testified, the prosecution closed its case.
50. When the accused was put to his Defence, he gave sworn testimony.
51. He testified that he used to live alone, whilst the deceased lived with Burayan.
52. When he returned to the house on the evening of the material day, the accused found the deceased quarreling with Burayan.
53. It was his evidence that Burayan and the deceased fought, using knives; and that Burayan stabbed the deceased.
54. After that incident, Burayan escaped from the scene.
55. During cross-examination, the accused vehemently denied having fought the deceased.
56. I have given due consideration to all the evidence on record. I find that the deceased died due to severe internal bleeding, due to a penetrating stab wound to the chest.
57. From the evidence adduced by the prosecution, it is not clear whether the stab wound was inflicted by a knife or a sword.
58. The prosecution exhibited a rungu and a twisted metal bar, but no evidence was led to demonstrate the nexus, if any, between the said exhibits and the death of John Lemishen Kisokun.
59. And whereas the Investigating Officer alleged that it was **PW3** who told him about a quarrel between the deceased and the accused, at a bar, **PW3** testified that his only role in the case was to ferry the injured person from Tamu to Muhoroni; and thereafter he ferried the body to the mortuary.
60. I find no credible evidence that would provide any motive for the incident, as the prosecution had alluded to.
61. It is clear that there was no eye-witness to the fighting during which the deceased was stabbed.
62. **PW1** said that Anthony was holding a knife, as he was trying to leave the house which was the scene of crime.
63. As nobody saw the actual act of stabbing, and because Anthony was also holding a knife at the scene, this court cannot rule out the

possibility that the fatal injury may have been inflicted by a person other than the accused.

64. On the strength of the circumstantial evidence herein, the court is unable to find that everything points at only the accused person as the author of the death of John Lemishen Kisokum.

65. I find that the prosecution failed to prove beyond any reasonable doubt that it is the accused who murdered the deceased.

66. Accordingly, I find the accused "*Not Guilty*". He is therefore acquitted.

DATED, SIGNED and DELIVERED at KISUMU This 22nd day of September 2020

FRED A. OCHIENG

JUDGE