



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL/MURDER CASE NUMBER 31 OF 2016

REPUBLIC.....PROSECUTION

VERSUS

SAMUEL ALIMARIS.....ACCUSED

JUDGMENT

SAMUEL ALIMARIS, the accused herein is charged with the offence of **Murder, Contrary to Section 203 as read with Section 204 of the Penal Code.**

The Particulars of this offence are that on the 24th day of November, 2016 at Nakwamorou village within West Pokot County, the accused herein murdered Geoffrey Thomas Loweti.

The prosecution case is that PW-3 in this case is married to PW-2 and the two are the parents of the deceased. PW-1 is a brother to PW-2. PW-3 was sold land measuring 5 acres by the accused person, in which land he built his house. The accused is their neighbour at Selewo. The accused had quarreled the deceased years before the incident in this case over some posts. The issue was resolved then but the accused revived it later prompting PW-2 to report about it to the village elder at Selewo. The deceased prior to the incident in this case had sold four cows belonging to his father, to the accused. He bought a motorbike using the proceeds of the said sale. The father (PW-3) was not happy about it. He refunded the amount to the accused who gave back the four cows.

On 23/11/2016 PW-3 was building his house at Selewo. He was surprised at 2.00 p.m. when the accused invaded him and attacked him with a bow and arrows. Two arrows were shot at him but he managed to escape. The deceased witnessed the incident and also ran away. The accused shot an arrow at him of which got him on the left ribs. He fell down crying as a result. The mother (PW-2) witnessed the incident. She was also attacked by the accused and her left hand pointing finger was injured before she managed to escape. The accused chased after her while armed with a bow and arrows but was lucky to have been rescued by members of the public. PW-3 heard as the deceased cried across the road. He rushed there to assist him. The deceased had blood oozing from the side of his ribs. Using a motorcycle, he was rushed to Selewo dispensary.

The area chief called police at Kapenguria Police Station. He reported to PW-5 about the incident saying that the victim was dead. He called upon the police to go and collect the body. PW-5 together with P.C. Omondi ,Muya and a driver called Koross headed towards the scene. When they got to Selewo dispensary, a relative of the deceased told them the victim was in the dispensary. They got therein and found that he was alive and was being attended to by the nurses. The nurses requested him to rush the victim to Kapenguria County Referral Hospital. PW-5 spoke to the victim who said he was shot at by his

neighbour called Samwel Alimarisdue to a land boundary dispute. He was got in the vehicle and on the way met with Kapenguria Hospital Ambulance going for him. They transferred him to the ambulance. He was taken to Kapenguria County Referral Hospital. He was then transferred from there to Moi Referral Hospital in Eldoret for specialized treatment. He died there on 25/11/2016 while undergoing treatment.

The police visited the scene to carry out investigations. It was at 6.00 p.m. and was raining. They were not able to get to the actual scene. A villager told them the accused escaped in the forest with a bow and arrows. PW-5 left a message that incase he is found he be told to report at the Police Station. PW-6 investigated the case. He recorded the deceased's relatives statements on 26/11/2016.

On 28/11/2016 the post mortem was carried out on deceased's body by PW-4 at Kapenguria Referral Hospital. He noted that the 5th and 6th left side ribs were broken. There was an entry wound present on the left chest wall. Trachea had deviated to the right. Left lung was smaller than right lung and atrophial. Left Hemothorax of 500 mls of blood. There was pool of blood in the pericardial cavity. Heart was compressed and atrophied. Signs of cardiac tamponade was present. He formed the opinion that the cause of death was cardiac tamponade due to internal bleeding and left Hemothorax after penetrating trauma to the left chest attack with an arrow.

On 1/12/2016 at about 5.30 p.m. the accused went by himself to Kapenguria Police station. He found PW-6 and informed him that he is the one who shot the deceased with an arrow and had heard that he passed away. He was arrested and taken to Kapenguria Referral Hospital for mental assessment. He was found fit to stand trial. A P3 form was filled to that effect. PW-6 had recovered the arrow of which allegedly injured the deceased, at Selewo dispensary. He kept it as an exhibit. The accused was then charged with the offence carried in the information sheet.

The accused in his defence stated that on 23/11/2016 he was at home in Nakwamoron village. He heard a quarrel between the deceased and his mother over cows of which the deceased had sold without the consent of his father. The accused had bought two of the said animals in the market. He returned them back. On the material day he was informed that Thomas was approaching aiming at him with an arrow. He rose and confirmed the report. He ran into the forest. He later returned slowly home. He noted some blood spots heading to his house and outside. In the house he found no one. He decided to go and report to the police. On the way he heard someone had shot at his son with an arrow. He went to the police and reported. He then went home. 5 days later he heard the son of Thomas died and was buried. He heard it was rumoured he is the one who had killed him. He went back to the police on 30/11/2016 to report. He was told to record a statement and was charged. He denied the offence.

In determining whether the offence against the accused is proved by the prosecution beyond reasonable doubt, the three ingredients for the offence of murder of which I need weigh are:-

1. The fact of death of the deceased.

2. The cause of such death; proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person; and

3. Proof that the said unlawful act or omission was committed with malice aforethought.

Both sides are agreeable that the victim is dead. All the prosecution witnesses ascertained to that fact, that he died at Moi Referral Hospital in Eldoret while undergoing treatment. The accused in his defence expressed that he was aware that he died and was buried. The fact of the death of deceased is therefore not in dispute and is settled beyond reasonable doubt.

There is evidence as to the cause of death to the deceased. PW-2 is an eye witness and saw the accused shoot an arrow to the deceased which pierced him on the left ribs. The accused had before that shot two arrows at PW-3 but missed. He also injured PW-2 after he shot the deceased. The deceased before he died told PW-1 and the police that it is the accused, his neighbour, who shot at him with an arrow. Though this is not a dying declaration, it is a fact that he told them so. The accused himself upon

presenting himself to the police after the death of the deceased, indicated to PW-6 that he is the one who shot at the deceased with an arrow. The evidence is strong, firm and consistent in the case that it is the accused who shot at the deceased with an arrow. PW-4, the doctor who carried out the postmortem indicated that the wound caused by the arrow, led to the death of the deceased. There is therefore no doubt that it is the accused person who killed the deceased.

The unlawful act was committed with malice aforethought. The deceased was escaping from the accused when the latter shot at him with an arrow. An attack with an arrow shot from a bow would cause death or grievous harm to the victim and the accused was well aware of the fact. The death of the victim was not therefore unexpected or a surprise to the accused, given his choice of the weapons used.

The accused's defence was an afterthought. It did not arise during cross-examination of the witnesses that the deceased was killed by his father, the PW-3 in this case. It is also not realistic that as a neighbour to the deceased he just heard of his death and burial. He could not as well have told PW-6 that he killed the deceased if actually he did not. The defence is therefore dismissed.

The upshot is that the offence against the accused is proved by the prosecution beyond reasonable doubt and the accused is convicted of it under **Section 203 as read with Section 204 of the Penal Code.**

S. M. GITHINJI

JUDGE

17.1.2018

Judgment read and signed in the open court in presence of the accused, his advocate, Madam Opondo and the state prosecutor, this 17th day of January, 2018.

S. M. GITHINJI

JUDGE

17.1.2018