



REPUBLIC OF KENYA`
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO. 20 OF 2016

REPUBLICPROSECUTOR

versus

LETUIYA LTIYANGOIACCUSED

JUDGMENT

1. **LETUIYA LTIYANGOI (LETUIYA)** pleaded not guilty to a charge of murder. The particulars of that charge are that **Letuiya Ltiyangoi on 5th October 2013 at Rumatte village in Oldonyiro Location within Isiolo County murdered Allan Lereesh (deceased).**
2. The prosecution called a total of **10 witnesses**. It was **Chadim Lengirnas (PW 1)** who gave very insightful evidence of what occurred on 5th October 2013 which led to the death of the deceased. PW 1 knew both Letuiya and the deceased. They were both his neighbours and he was well acquainted with them for many years. On 5th October PW 1 stated that Letuiya went to his house at 9 a.m. He noted that Letuiya had a spear and an axe. PW 1 asked him where he was going with the spear and axe. Letuiya responded that he had been in search of grass for his calf but was unsuccessful to get grass.
3. When PW 1 parted with Letuiya PW 1 went to deceased's homestead (boma) where ten elders (wazee) were meeting to discuss prospects of building a school in the area. That the meeting was held at deceased's home because he was the chairman of the school. The meeting went on up to 1 p.m. whereupon the elders left leaving PW 1 with the deceased. At the deceased's home there was also the wife of the deceased. At about 2 p.m. Letuiya arrived at the deceased's homestead. PW 1 noted that Letuiya still had the spear and the axe. Letuiya found PW 1 and deceased seated together. Letuiya asked the deceased what he had been 'asking' him. Deceased stood up but did not reply and then Letuiya speared him below the stomach and as the deceased fell down Letuiya hit him at the back of the head with the axe. Letuiya ran away to his house. PW 1 summoned a vehicle which took deceased who was then still alive. PW 1 said that he was later told that the deceased had a quarrel with Letuiya, previously, at the market that and they had confrontation there.
4. PW 1 in response to cross examination stated that Letuiya after that incident moved away from where he had lived together with his possessions and his arrest was affected away from where he lived.
5. **Naalalet Leeresh PW 2** wife of the deceased said that on 5th October 2013 she was at home together with other ladies and her co-wife. She was cooking lunch for her children. She confirmed PW 1 was at their homestead together with the deceased. She also confirmed that there were elders who were having a meeting with her deceased husband. Those elders left leaving PW 1 in the company of the deceased. She said she heard noise. This led her to get out of her house. When outside her house she found Letuiya had speared the deceased. She saw Letuiya remove the spear from the deceased's body

and also saw him hit the deceased's head with an axe. PW 2 said that she called other elders because she could see that her husband was dying. Before the vehicle arrived a goat was slaughtered and blood was given to deceased. PW 2 confirmed that Letuiya and the deceased had previously had a confrontation at the market. She saw on that day at market place both Letuiya and deceased holding each other but they were separated by elders. She stated she did not know the reason why Letuiya and deceased had a disagreement.

6. **Konenee Lelon Lereesh (PW 3)** the brother of the deceased on 5th October 2013 while in his homestead heard PW 2, the wife of deceased, scream. He went towards where the scream were coming from. He saw accused running away and he noted he was armed with spear and axe. PW 3 saw deceased was down and was bleeding. The blood was coming from stomach and at the back of the head. Before the vehicle arrived he said they slaughtered a goat, took its blood mixed with fat and administered it to the deceased according to the Samburu tradition. He accompanied the deceased in the vehicle but deceased was pronounced dead on arrival at Nanyuki Hospital.

7. The post-mortem report was produced by Ayub Gitaka Macharia a human pathologist. The report indicated that the deceased's clothes were soaked in blood. He had a wound on the left groin region which was 5 cm by 3 cm with 10 cm depth. The wound was gaping with visible clots. The femoral vessel were severed and the bladder was perforated. There was also 2 cm by 3 cm wound on the temporal region surrounded by dry blood. There was swelling on the face and the brain. The cause of death was severe loss of blood following penetrating injury to the left groin.

8. **Simon Amulet (PW 7)** is a registered nurse who responded to the call for assistance from the area of oldonyiro. He together with police officers went, using a land cruiser, to the deceased's homestead. On arriving there they found the deceased lying in a pool of blood. He noted deceased had a stab wound on femoral triangle. He noted deceased was in semi-conscious state but clinically he was dead because of the loss of blood. PW 7 administered fluids to the deceased and applied pressure to the wound. They first transported deceased to a clinic called Ndungu Zangu but because of the critical condition of the deceased he was advised to take him to a hospital. Deceased was taken to Nanyuki Hospital where he died on arrival.

9. On being cross examined PW 7 said they used a land cruiser instead of an ambulance because an ambulance could not cope with the terrain of that area. In answer to the question whether deceased's life could have been saved if an ambulance was used he said:-

“Yes his (deceased's) life could have been saved if the right vehicle was used.”

10. P. C. Alias Kimathi PW 9 was called on 6th July 2014 by a chief of Kilimon and informed that there was someone who was drunk and was creating a disturbance. He together with another officer arrested that person who was Letuiya. It was then realised that Letuiya was wanted in respect to the death of the deceased in this case.

11. Letuiya on being found to have a case to answer defended himself by stating, not under oath, that he did not know the person it was alleged he killed. He denied he killed the deceased. He said that the deceased could have been killed by someone else.

12. Learned counsel Mr. Mwangi Kariuki for Letuiya in his final submission stated that prosecution had failed to prove the case against Letuiya because prosecution had not proved motive on the part of Letuiya which gave credence to Letuiya's defence. He also submitted that the traditional treatment administered to the deceased, of giving him goat's blood and fat; and the fact that the deceased was transported with a land cruiser vehicle and not an ambulance contributed to the death of the deceased.

13. Learned counsel Mr. Tanui Principal Prosecution counsel submitted that motive is not a necessary ingredient in respect to murder charge. Further he submitted that deceased succumbed to death due to the injuries caused by Letuiya and not the traditional treatment or the vehicle that transported him.

ANALYSIS AND DETERMINATION

14. I will in due course deal with the issues raised by counsels in their final submissions.

15. The prosecution is required to prove the following:-

- (a) ***The fact that deceased died;***
- (b) ***that it was Letuiya who committed the unlawful act that cause that death; and***
- (c) ***That Letuiya had malice aforethought;***

16. The fact that deceased died was confirmed by the evidence of PW 7 the registered nurse who accompanied the deceased to Nanyuki Referral and Teaching Hospital. Death was also confirmed by the pathologist who testified and produced the post-mortem report. That report showed the cause of death to be due to loss of blood secondary to the injury in the groin. Prosecution therefore did prove death.

17. When the deceased was attacked by Letuiya with a spear and an axe PW 1 was present. It was about 1 p.m. in the day. There is no likelihood of mistaken identity because Letuiya was well known to PW 1. They even had met at 9 a.m. the same day when PW 1 noted Letuiya was armed with a spear and an axe. PW 2 the wife of the deceased on hearing screams went out of her house and saw Letuiya removing his spear from the deceased’s groin and she also witnessed him hit the deceased at the back of his head with an axe. It is important to note that the learned counsel for Letuiya in cross examining both PW 1 and PW 2 did give the impression that Letuiya was not the person who attacked the deceased. Even in his own defence Letuiya did not deny that he was at the scene when deceased was attacked. It follows that the defence offered by Letuiya was an afterthought. Prosecution did prove beyond reasonable doubt that it was Letuiya who committed the unlawful act which lead to the death of the deceased.

18. Did Letuiya have malice aforethought? DW 1’s evidence was that Letuiya first speared the deceased at his groin and as the deceased fell down Letuiya hit him at the back of his head with axe. **Section 206 of the Penal Code Cap 63** provides in part that :-

“206. Malice aforethought shall be deemed to be established by evidence proving any one 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)

(c)

(d)

No doubt the actions of Letuiya show he had intention to cause death or grievous harm to the deceased. Prosecution therefore proved that Letuiya had malice aforethought.

19. Counsel for Letuiya erred to submit that this case fails because prosecution failed to prove motive on the part of Letuiya. **Section 9(3) of Cap 63** provides:-

“Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

Consider the provision of that section relation to section 203 of cap 63 under which the murder charge was laid. **Section 203 of Cap 63** states:-

“Any person who of malice aforethought cause death of another person by unlawful act or omission is guilty of murder.”

There is no requirement under section 203 of Cap 63 for motive to be proved. For that reason the submission by learned counsel for Letuiya is refused. This finding is supported by the Court of Appeal in decision in the case of **CHOGE V REPUBLIC (1985) KLR**viz:-

“Under section 9(3) of the Penal Code (cap 63), the prosecution is not required to prove motive unless the provision creating the offence so states, but evidence of motive is admissible provided it is relevant to the fact in issue. Evidence of motive and opportunity may not of itself be corroboration but it may, when taken with other circumstances, constitute such circumstantial evidence as to furnish some corroboration sufficient to establish the required degree of culpability. The evidence of the ill feeling between the deceased and the 1st appellant would have corroborative fact if the other evidence had been satisfactory which it was not.”

20. In any case there was intimation in the prosecution’s evidence which was not challenged in cross examination that there was previously confrontation between the deceased and Letuiya at the market place. PW 2 said that the two were separated by elders. There then is a possible motive for the attack by Letuiya of the deceased.

21. Letuiya’s learned counsel submitted there were acts that broke the chain of causation leading to the death of deceased. ***Novus actus interveniens*** is defined in the book Criminal Law Fifth Edition by Jonathan herring as:-

“a free voluntary act of a third party which renders the original act no longer a substantial and operating cause of the result.”

Intervening cause is defined in Blacks Law Dictionary Eighth Edition as:

“An event that comes between the initial event in a sequence and the end result thereby altering the natural course of events that might have connected a wrongful act to an injury.”

22. Bearing in mind the above two definitions and considering the evidence tendered by the prosecution there can be no basis for the submission made that the Samburu traditional treatment of giving the deceased goat’s blood and fat and of the transportation of the deceased by land cruiser vehicle and not the ambulance could have intervened in the consequence of Letuiya’s attack of the deceased. The pathologists evidence was clear that the cause of death was the loss of blood secondary to the injury to the groin of the deceased. The chain of causation, that is the result of the act of spearing and cutting the deceased, was not broken by the actions taken by others who were trying to treat the deceased. That submissions therefore is rejected.

23. **The court finds Letuiya Ltiyangoi guilty of murder of Allan Lereesh deceased. He is accordingly hereby convicted of the said murder.**

DATED AND DELIVERED AT NANYUKI THIS 2ND DAY OF AUGUST 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Accused: LetuiyaLtiyangoi

For Accused

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE