



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 29 OF 2013

REPUBLIC.....STATE

VERSUS

LEPIRASI LESIPITI.....ACCUSED

JUDGEMENT

The accused **LEPIRASI LESIPITI** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE.**

The particulars of the offence were that

“On the 3rd day of February, 2013 at Leangata Village, Ndonyo Wasin Location in Samburu East District, within Samburu County, murdered LOKOKONYO LEYEENI”

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced on 4/6/2014 before **Hon. Justice Anyara Emukule** (Retired) who only heard the first prosecution witness. There after I took over the trial and heard the evidence of the remaining eleven (11) witnesses. A total of twelve (12) prosecution witness testified in this case.

In this case there were only two eye witnesses to the incident. **PW7 NGIRWAI LESAMPEI** told the court that on 3/2/2013 she was coming home from the market with the deceased, and another lady. At a place called Kibartarne they met the accused who began to follow them and then attacked them. As they were crossing a dry river bed the accused cut the deceased on the neck. **PW7** ran away to call the elders. The matter was reported to police who came and removed the body to the mortuary. The accused was later apprehended and charged with the offence of murder.

At the close of the prosecution case the accused was found to have a case to answer and was placed onto his defence. He gave a sworn defence in which he denied having stabbed and killed the deceased.

Section 203 of the Penal Code, Cap 63, Laws of Kenya defines murder in the following terms

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

In this case the fact of the death of the deceased is not in any doubt. Several of the prosecution witnesses told the court that they saw the dead body of the deceased lying in a pool of blood with a cut to the neck and back of head.

PW8 LEKIRIMBOTO ENYIKE was a clan member of the accused and **PW6 ANANGIROYA LEKOKOYO LEPIRIS** a son to the deceased both told the court that they identified the body of the deceased to the doctor who performed the autopsy. Both witnesses who knew the deceased well identify him as ‘**Lekonyoyo Leyeeni**’.

PW11 DR. STEPHEN KIVUVA gave evidence regarding the autopsy that was conducted on the body of the deceased. The autopsy which was conducted at Isiolo District Hospital revealed that the body had a cut on the left side of the head and on the left ear. The skull was open revealing the brain matter. The cause of death was opined to be ‘**massive haemorrhage secondary to multiple cut wounds on the face, head and neck**’. The doctor filled and signed the post-mortem report which was produced in court as an exhibit **P. exb 1**.

As stated earlier **PW7** was the only witness who claimed to have witnessed the accused cutting the deceased. **PW7** told the court that at the material time she was with one ‘**Mpasasuroi**’

PW2 was **MPARASUROI LESAMBEI**. She told the court that on the material day she was on her way to the shops with deceased and **PW7**. The accused came from behind and attacked them. In her evidence **PW2** says

“The accused had a sword which he used to kill the deceased”.

However in the same breath **PW2** says that when the accused and the deceased confronted each other she ran away. **PW2** says

“We then ran away, I left the two fighting. I did not see accused kill the deceased.... After I ran away I never returned to the scene....”

Further on in her testimony **PW2** says

“I did not see the accused and deceased struggling. I ran away. I did not see the accused do anything at all”

The observation of this court was that the demeanour of this witness left a lot to be desired. She seemed confused and was not clear of her facts.

Indeed the state eventually declared **PW2** to be a hostile witness under cross-examination by the learned State counsel. **PW2** went on to complicate her testimony by stating

“I recall I told police that I had hidden and I saw the accused cut the deceased. I did not understand well when I recorded my statement. I did not understand well when I recorded my statement. I did not see the accused cut the deceased.....”

It is clear that **PW2** was out to disown her statement to the police. Her evidence directly contradicts what **PW7** told the court **PW2** was clearly not an honest witness and her veracity is in grave doubt.

PW3 HASSAN LENGOLIAI told the court that he saw the accused quarrel with other men. However **PW3** states clearly that he never saw the accused and deceased fight in his presence.

PW4 NTOURAB LOLTIANYA was also at the scene. However he states under cross-examination that

“I did not see accused inflict any injury on the deceased”.

PW5 NAGUSA LERAMU stated that the accused hit him on the head and he fell unconscious. However told the court that he only ‘heard’ that the deceased was killed by the accused. This amounts to hearsay evidence which is not admissible in evidence. **PW5** did not give the names of the person or persons who had given him this information.

PW6 NANGIROYA LEKOYO LEPIRIS told the court that he found the body of the deceased lying by the river bed. **PW6** then states that he and others searched for the accused and apprehended him. However under cross-examination **PW6** admits

“I did not see the accused injure the deceased.

PW10 CORPORAL DOUGLAS NAHASHON OBIERO stated that when questioned, the accused told him that the deceased had cut off his thumb so the accused cut him in revenge. Such a statement if indeed made by the accused would amount to a confession. The law relating to the admissibility of confessions is clearly set out in Section 25A of the Evidence Act, Cap 81 Laws of Kenya. There is no evidence that the accused was properly cautioned before this alleged confession was made to **PW10**. Further **PW10** was not a Chief Inspector of Police and had no legal authority to receive such a confession. Thus I will disregard the evidence of **PW10** in so far as it relates to this alleged confession by accused.

The evidence against the accused remains largely that of suspicion. In **SAWE Vs REPUBLIC [2013] I.E.A 280**, the Court of Appeal stated that

“Suspicion however strong cannot provide a basis for inferring guilt which must be proved by evidence”.

In this case the evidence is contradictory and lacks cogency. Only one witness out of twelve witnesses claims to have seen accused cut the deceased. In my finding the prosecution have failed to prove this charge of murder beyond a reasonable doubt. In the circumstances I enter a verdict of ‘Not Guilty’ and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless is otherwise lawfully held.

Dated and delivered in Nakuru this 17th day of November, 2017.

Mr. Orege holding brief for Ms Muthoni

Mr. Chigiti for DPP

MAUREEN A. ODERO

JUDGE