



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL CASE NO. 46 OF 2010.**

**REPUBLIC ::: PROSECUTOR.**

**VERSUS**

**ATODOPUS LOKWANYANG )**

**MICHAEL LONGORIKERU ) ::: ACCUSED.**

**JACKSON CHANAKOU )**

**J U D G M E N T.**

1. The information presented to this court by the Attorney General dated 29th August, 2010 and filed herein on 1st September, 2010, was to the effect that the accuseds **Atodopus Lokwianyang alias Losiakemer** (first accused), **Michael Longorkeru** (second accused), **Dominic Losiakilim** (third accused), **Jackson Madangiro** (fourth accused) and **Jackson Chenakou** (fifth accused), faced a charge of murder contrary to section 203 read with section 204 of the penal code, in that on the 16th August, 2010 at Korelach Parak village, Chepararia West Pokot, jointly with others not before court murdered Akudusios Siatukei.

2. The case for the prosecution was that the accused and the deceased were all neighbours and on the 15th august, 2010, village elders convened a public meeting to deliberate on allegations of witchcraft made against the deceased by the first accused (Atodopus). The meeting was attended by a large group of villagers who included the son of the deceased, **Stephen Siatukei (PW1)**, the wife of the deceased, **Chepakaptayoi Siatukei Aduchosiu (PW2)**, the daughter of the deceased, **Monica Lokwakal (PW4)** and the accused persons.

3. The meeting continued for along period of time during which accusations were made by the first accused to the effect that the deceased had bewitched his children and in particular a son called Joel. The deceased denied the allegations and defended himself accordingly. However, the accuseds seemed not to have believed him. It was then that the deceased was beaten by a group of young men using strokes of sticks at the instance of their leader who was the fifth accused (Chanakou). The fifth accused and the rest of the accused merely watched as the deceased was being beaten up.

4. The beating continued for a long duration of time after which the houses of the deceased were searched for any witchcraft paraphernalia before the meeting continued late into the night while the deceased was in a state of injury amid threats by the villagers for his lynching. He remained at the scene upto the following day the 16th August, 2010, when his sons contacted the local chief, **Samwel Kapelngorok (PW3)**, who proceeded to the scene and was informed that the deceased had been killed by members of public. He (PW3) did not proceed to the actual meeting place as the situation was very tense.

5. The chief called the police and proceeded with them to the scene where the body of the deceased had been taken. They found the body of the deceased covered with a blanket and many people in a gathering.

The deceased's daughter (PW4) confirmed that the deceased was beaten to death in her presence and others prior to the police arriving at the scene.

**Sgt. George Otieno (PW6)**, and his colleagues proceeded to the scene where they found a large group of people gathered at the homestead of the first accused. They were led to where the body of deceased had been taken and found it wrapped in a blanket and leaning on a tree.

6. Sgt. Otieno and his team took photographs at the scene and removed the body to the Kapenguria District Hospital Mortuary. They arrested the wife of the deceased but the five accused and others proceeded to the police station and demanded her release. It was at that juncture that the five accused were arrested on grounds that the first accused convened the meeting in which the conduct of the deceased was discussed, the second accused (Michael Longorkieru) and third accused (Dominic Losiakilim) were some of the village elders called to arbitrate the dispute, the fourth accused (Jackson Madangiro) and fifth accused (Jackson Charakou) were said to be family members of the first accused who tortured the deceased.

7. **Dr. Daniel Ojuka (PW5)**, performed a post mortem on the body of the deceased and prepared the necessary report (P. Exh. 3) which indicated that the deceased died from cardiorespiratory arrest secondary to asphyxia due to hanging. The five accused were eventually charged with the murder of the deceased and after the close of the case for the prosecution, the first, fourth and fifth accused were placed on their defence. The second and third accused were found with no case to answer and acquitted in accordance with section 306.

8. In his defence, the first accused denied the offence and stated that he called the material meeting through the area chief. The meeting was about remarks made by the deceased at the first accused's homestead. A group of villagers attended the meeting and in the process, the deceased donated a goat to resolve the problem. Thereafter everybody departed for their respective homes but on the following day, information was received that the deceased had been killed. He (first accused) and others were summoned by the village elder who took them to the homestead of the deceased but found that the body of the deceased had been removed to the mortuary. He was asked to report to the Kapenguria police station and when he did so, was locked in the police cells and later arraigned in court with the present offence.

9. The fourth accused (Madangiro) was inadvertently released after the close of the case for the prosecution and was not available to make his defence. Efforts made by the first and fifth accused and the prosecution to trace him proved futile. He remains at large. The fifth accused in his defence also denied the offence and indicated that he attended the subject meeting in which the deceased donated or paid a goat as a way of resolving the dispute. Thereafter, he (fifth accused) left for his home but on the following day he heard that the deceased had been killed. He was later called by the chief and taken to Kapenguria police station where he was locked up before being arraigned in court.

10. From all the foregoing evidence, it is apparent that the deceased was a victim of lynching by a group of villagers who had gathered at the homestead of the first accused to deliberate and perhaps resolve accusations made against the deceased by the first accused. As it were, the first accused was the convenor of the meeting which was attended by villagers and a number of elders. The fourth and fifth accused were also in attendance.

Something appeared to have gone wrong during the meeting such that the deceased was tortured throughout the day before being set upon and assaulted by youths who were at the meeting.

11. The post mortem report (P. Exh. 3) indicated that the deceased died from cardio-respiratory arrest secondary to asphyxia due to hanging.

The photographs (P. Exh. 4) taken at the scene where the deceased was found showed that his body was on its knees, leaning against a tree held by a rope tied around the neck and hanging from the tree.

Apparently, the deceased for whatever wrong he did was assaulted and hanged. Those responsible for that gruesome act took the law into their own hands thereby committing the offence of murder.

12. The evidence indicated that the culprits were a group of youths who seemed to have carried out their unlawful transaction right before the eyes of the villagers and elders who had gathered at the scene. The first accused was not such youth. He was thus not incriminated in assaulting and hanging the deceased even though he was the convenor of the village meeting which went wrong and led to the death of the deceased in his presence. There was no evidence that he aided and abetted the youths in their unlawful act against the deceased. His arrest and arraignment in court with the present offence was prompted by the mere fact that he made accusations against the deceased and convened a meeting of villagers and elders to deliberate the matter and also that he was present and did nothing while the youth assaulted and hanged the deceased.

However, his defence was that he was not at the scene when the deceased was killed as the meeting ended and people went home after the deceased donated a goat and resolved the dispute.

13. The same defence was applied by the fifth accused who acknowledged that he attended the meeting but left and went home after a goat had been paid by the deceased. It was not until the following day that he learnt that the deceased had been killed. However, a son of the deceased (PW1) implicated him as having been responsible in leading the youth who assaulted the deceased but contradicted himself by saying that it was the youth who assaulted the deceased while the fifth accused and others watched.

14. The said son of the deceased also implicated the fourth accused by saying that he was the one who ordered the youth to assault his father. Interestingly, he (PW1) indicated that he was not present when the deceased was killed. So, his evidence against the fifth accused with regard to the present offence was non-existent and his evidence that the youth who assaulted his father were known to him but were not charged with the present offence despite necessary information having been given to the police.

15. The deceased's wife (PW2), alleged that the deceased was assaulted by a mob of people who included the fifth accused. She implied that the deceased was beaten to death after which she and others were forced by the mob to tie the dead body with a rope. They were also forced to hang the body. She thus disproved the prosecution narrative that the deceased was assaulted, killed and hanged with a rope by a group of youths.

16. The deceased's wife also suggested that it was herself and other relatives who hanged the deceased and caused his death as opined by the doctor (PW5) who performed the post mortem on the body of the deceased. She also suggested that the deceased had already been killed by the youths before she and others hanged the body after being forced to do so by the youths. What her evidence has shown is that the circumstances which led to the death of the deceased were not ascertained. It is possible that the deceased was assaulted to death but this was overruled by the post mortem report. It is also possible that the deceased was hanged to death as suggested in the post-mortem report.

17. Whatever the case, it was however certain that the deceased died in the hands of a lynching mob of youths who may or may not have included the fifth accused.

In view of the contradictory nature of her evidence, it is difficult for this court to hold that the fifth accused was indeed among the youths who assaulted the deceased and caused his hanging.

18. The area chief (PW3), could not tell which person or persons caused the death of the deceased as he arrived at the scene after the act.

The deceased's daughter (PW4) indicated that they were forced by the first and fifth accused together with their co-accused to tie the body of the deceased by the neck with a rope and pull it towards their home

where they were forced to hang it on a tree. However, this evidence did not tally with what the deceased's wife (PW2) stated with regard to the persons who forced them to tie the body of the deceased with a rope. The wife implicated the youths.

19. Therefore, the evidence by the deceased daughter (PW4) against the first and fifth accused was not reliable for a finding that they actively participated in causing the death of the deceased even though they were arrested and charged with the present offence.

The investigating officer (PW6) clearly indicated that the deceased was hanged by his own wife allegedly under instructions from the family of the first accused.

20. He (PW6) also indicated that the hanging of the deceased by his wife was a customary ritual of their community and that is why upon her arrest, the first and the fifth accused together with their co-accused demanded her released from police custody. She was indeed released but the heat was re-directed at the accused prompting their arrest and arraignment in court.

21. Suffice to hold that the investigating officer did not carry out serious and proper investigations to determine the criminal culpability of the first and fifth accused or any other suspect in the whole saga which led to the present offence. This court cannot therefore make a finding to the effect that the offence has been proved against the first and fifth accused beyond reasonable doubt.

Consequently, the two accused (first and fifth) are hereby found not guilty as charged and are acquitted accordingly.

**[Delivered and signed this 23rd day of February, 2015.]**

**J.R. KARANJA.**

**JUDGE.**