



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL CASE NO. 25 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

SIMON LOTERE EYANAE.....ACCUSED

J U D G M E N T

1. The accused, **Simon Lotere Eyanae**, was charged with murder, contrary to Section 203 read with Section 204 of the penal code, in that on the 4th April, 2011, at Kapkoi Farm in Trans-Nzoia County murdered **Petro Lokoli**.
2. The case for the prosecution arose from the facts that the deceased was the father of the accused and on the material date they were together at the home of **Rose Nduta Gikondo (PW1)**, when they disagreed and in the process the deceased was hit on the head by the accused with a wooden object (rungu), and in the process suffered fatal injuries.
3. A report was made to the police and **CIP Amos Namasaka (PW8)**, visited the scene with his team and removed the dead body of the deceased to the mortuary. He found the body lying in a pool of blood at the home of Rose (PW1). He collected the suspected murder weapon (P. Exhibit 2) and later preferred this charge against the accused.
4. **Ann Loirien (PW2)**, was a neighbour to the deceased who lived with the accused. She found them quarreling over land and a previous incident that occurred between them. Thereafter, the deceased left for another neighbour's house and was followed by the accused who picked a panga but she (PW2) restrained him before he picked a piece of wood and followed the deceased. Later, she learnt from Rose (PW1) that the accused had killed the deceased.
5. **Pauline Esokon (PW3)**, was a sister to the deceased. She was informed by Rose (PW1) that the accused had assaulted the deceased. She proceeded to the scene and found the dead body of the deceased lying on the ground. She then called other relatives to the scene.
6. **Samuel Kamau (PW4)**, met the deceased and the accused and another person on the material date and was informed by the accused that the deceased had attempted to kill him (accused). He (PW4) left the trio and went away only to later hear screams from the home of Rose (PW1). He went there and found the deceased lying down on the ground with a head injury. The accused was not there at the time.

7. **Sgt. Geoffrey Ambane (PW5)**, arrested the accused one day after the incident and a brother to the deceased, **Joshua Ekeno Lokoli (PW6)**, identified the body of the deceased for post-mortem purposes. **Dr. Blastus Kakundi (PW7)**, indicated that his colleague conducted the post-mortem on the body of the deceased and completed the necessary post-mortem report (P. Exhibit 1) showing that the cause of death was cardio respiratory arrest due to severe head injury including fracture to the skull.
8. The defence by the accused was a denial that he murdered the deceased. He indicated that on the material date he was drinking “changaa” with the deceased at a neighbour's home and in the process they disagreed over a portion of land and quarrelled. The deceased left the scene and returned later holding a “rungu” which he tried to use to hit him (accused) after having poured liquor on his (accused's) face. He (accused) pushed the deceased and he fell down hitting a wooden bench with the back of his head.
9. The accused further indicated that he left the scene to look for help as the deceased had suffered serious injuries. He was drunk at the time. He went to fetch his relatives and also reported to the police but was locked in the cells for being drunk. He later learnt that the deceased had died and after being pressurized by members of the public he proceeded to a nearby G.S.U Camp where he was assaulted and his money taken. He was thereafter taken to Endebess Police Station and charged.
10. From all the foregoing evidence, it is not disputed that the deceased met his death after being fatally assaulted with a wooden object on his head. The evidence by the key prosecution witness i.e. Rose (PW1), indicated that the person responsible for the assault was the accused. She also indicated that the assault was sudden as it was committed no sooner had the deceased arrived at her house for water. She therefore discredited the accused assertion that he quarrelled with the deceased before pushing and causing him to hit a wooden bench with his head while falling down.
11. The evidence by Rose (PW1) also disputed the accused's allegation that the deceased was the aggressor as he had attempted to hit him with a rungu. The evidence by Ann (PW2), somehow rendered that of Rose (PW1) credible in as much as she said that the accused followed the deceased with a piece of wood after she had restrained him from picking a panga. The piece of wood was actually the “rungu” (club) that Rose (PW1) referred to. It was the same rungu that was recovered by the investigation officer (PW8) and treated as the murder weapon (P. Exhibit 2).
12. The accused's defence was soundly discredited by the prosecution evidence against him. He could not therefore he heard to say that the deceased fell down on his back and hit a wooden bench with his head thereby sustaining the fatal injury. In any event, it was the accused who caused the deceased to fall down and was therefore responsible for the consequences of his bad conduct of disrespecting his own father. He cannot in any way escape responsibility for the death of his father. His defence was a clear afterthought.
13. However, most likely than not, a brawl or quarrel between a father and a son occurred prior to the unfortunate incident which led to the death of a father. In the circumstances it cannot be said that malice aforethought was established against the accused. His big mistake was to use excessive force on his father. Consequently, this court finds him guilty of manslaughter contrary to Section 202 (1) of the penal code and convicts him accordingly.

Delivered and signed this 16th day of June, 2015.

J.R. KARANJA

JUDGE

