



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL CASE NO. 15 OF 2012

REPUBLIC PROSECUTOR

VERSUS

PAULINE TUKMWOR

VERONICA TUKMWOR LOKORIMA ACCUSED

J U D G M E N T

1. Pauline Tukmwor, (Accused one) and Veronica Tukmwor Lokorima (Accused two) are charged with two counts of murder contrary to S.203 read with S. 204 of the Penal Code, in that on the **10th March 2012** at Keiyo Farm Trans-Nzoia County, jointly with others not before court, murdered **Christopher Kiptoo Lokorima** (count one) and **Selina Cherop Siwakai** (Count two).

2. The case for the prosecution was to the effect that both accused and the second deceased (**Selina**) were wives of the first deceased (**Christopher**) and on the material date at about 3.00 a.m, a group of villagers proceeded to the homestead of the first deceased where they found the first and second deceased, the daughter, **Susan Cheyech Lokorima (PW1)** and an in-law, **Dixon Kaboyon Siwakat (PW2)**. The villagers were with the two accused and were armed with machetes (Pangas) and brooms. They accused both deceased of being wizards and tied them up with ropes before assaulting them.

3. Both deceased were seriously and or fatally injured before being pulled into a grass thatched house which was then set on fire resulting in their being burnt beyond recognition. The police arrived at the scene much later.

Daniel Siwakat (PW3), was brother to the second deceased and brother in-law to the first deceased. He identified their charred bodies for purposes of post mortem.

4. Dr. Blastus Kakundi (PW4), conducted the necessary post mortem and compiled a report (P.E.1) indicating that the deceased died from cardiorespiratory failure due to severe burns.

PC Sammy Kimanzi (PW5), indicated that the investigations carried out by the police showed that the deceased were killed by own relatives who may have included the two accused after the second deceased was suspected of being a witch and after the first deceased attempted to protect her.

5. The two accused were eventually arrested and charged with the present offences. They both denied the offences. They implied that the second deceased was a friend to the first deceased and indicated that they were called from their homes and informed of the happenings at their Keiyo home. They proceeded there separately and found a crowd of people surrounding what appeared to be pots. They were told to carry the pots to the police station and were locked up on arrival before being charged later with

the present offences.

6. From the evidence no dispute arose with regard to the circumstances and the manner in which the deceased persons died. They were suspected by villagers of being witches or wizards after which the villagers took the law into their hands by fatally assaulting and burning their bodies to ashes. There was no doubt that the intention of the villagers was to cause their deaths. Indeed, the deceased were murdered brutally and cold heartedly by the villagers.

7. The big question is whether the two accused had a common intention with the villagers and acted collectively with them in killing the deceased. They both pleaded innocence and indicated that they merely arrived at the scene only to be lumped up together and being told to carry some pots to the police station. They were seen at the scene by Susan (PW1) but she did not see them assaulting the deceased, or setting the grass thatched house on fire. She implicated a person called Francisca with setting the house on fire. She also saw her uncles **Pushen** and **Moi** at the scene.

8. Dixon (PW2) indicated that he was chased from the scene by the crowd but saw the deceased being assaulted while he was a distance away. He initially woke up from his sleep after hearing shouts and saw the deceased having been tied up with ropes and being beaten by the two accused and others. He was the only person who implicated the two accused but his evidence in that regard was clearly not reliable considering that it was doubtful whether favourable conditions for the identification of the assailants existed at the material time. Given that he had just woken up from his sleep and that he stood a distance away after being chased from the scene by the crowd it was not sufficient for him to say there was moonlight thereby implying that it provided favourable conditions for identification.

9. Dixon (PW2) did not say how far he stood from the scene and whether the moonlight was bright enough to provide favourable conditions for identification in such chaotic circumstances where there was a multitude of people baying for the blood of the deceased. His allegation that he saw the two accused or one of them participating in assaulting the deceased was unsupported by any other evidence and could not be relied upon.

10. In essence, the prosecution did not provide cogent and / or credible evidence for this court to arrive at a finding that the two accused formed a common intention with villagers and assaulted the two deceased to death. Their defence which portrayed them as victims of the circumstances that prevailed at the scene on the material date and time may well be upheld.

In the upshot, the two accused are hereby found not guilty as charged and are accordingly acquitted.

J. R. KARANJA

JUDGE

[Delivered and signed this 23rd day of July 2015.]