



REPUBLIC OF KENYA

KENYA LAW

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 36 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

EMURIA AROPA LOKAALE..... ACCUSED

JUDGEMENT

The accused, Emuria Aropa Lokaale is charged with murder under contrary to section 203 read with section 204 of the penal code. In that on the 26th day of August, 2012 at Lokichar Centre, Turkana County, murdered Edapal Epul. The case for the prosecutor was that on the material day, the deceased and his father/uncle **Otingaluk Lokit Angole (PW2)** visited a livestock dealer, **Peter Amakat Lochok (PW1)**, at his home when the accused appeared there and asked to speak to the deceased, the two went a distance away to speak, shortly thereafter, Lochok (PW1) and Angole (PW2) had screams and noted that the deceased had an injury on the abdomen and was bleeding. He (deceased) picked a stick and PW1 confronted the accused. The two fought. They were separated by Lochok and Anyole. The deceased was rushed to the hospital where he died while undergoing treatment. His body was identified for postmortem purposes by **Ekitela Samuel Adome (PW 3)** and **Laurence Ebonyo (PW4)**

He was son to Akal Epur (PW5) who did not witness the incident but found the deceased at the scene bleeding from the abdomen.

DR. Francis Kiiru (PW6) produced a post-Mortem report, compiled and signed by a colleague who conducted the post-Mortem. The report showed that the deceased died from cardiorespiratory arrest secondary to hypotension shock due to bleeding from ilioocolic artery.

IP Andrew Muchemi Kinuthia (PW7) investigated the case after which the accused was charged with the present offence. In his defence, the accused denied the charge and said that he went to Lokichar to look for a person indebted to him the person denied the debt and challenged him to a fight. He (debtor) threw sand on his (accused) face prompting a fight between them. He (accused) took off and escaped when the debtor returned to the scene with other people who wanted to lynch him after they had apprehended him. He was then taken to the police and charged.

From all the foregoing evidence it is undisputed that the deceased suffered a fatal injury after being stabbed on the abdomen with a sharp object (knife) most likely as a result of a quarrel or fight over some issues.

The incidence occurred no sooner had the deceased excused himself from Lochok(PW1) and Angole (PW2) in order to hold a discussion with the accused at a distance. The issue is whether the deceased was stabbed and fatally injured by the accused and if so whether the accused acted with malice a forethought in doing so.

The accused has denied responsibility but there is overwhelming evidence from Lochak (PW7) and Angole (PW2) clearly indicating that he was the assailant . and that he had quarreled and fought with the deceased prior to or during the incidence.

Also in his defence,the accused clearly suggested that the debtor with whom he disagreed and fought was the deceased. Apparently, he avoided to identify the deceased as the said debtor but made it clear that their disagreement and fight was over an outstanding debt.

Suffice to say that the accused 's denial of the offence was not genuine. This court must therefore find and hereby finds that it was him who was responsible for assaulting and occasioning fatal injury to the deceased by the use of excessive force. However,the evidence has shown that the death of the deceased was rather unfortunate and was never intended by the accused.

Consequently ,the charge established by the prosecution against the accused was that of manslaughter contrary to Section 202 (1) of the penal code. He is accordingly convicted.

(Delivered & signed this 21st day of January, 2014).

21/4/2014

Prosecutor; First offender.

J. R KARANJA

JUDGE

21/1/2014

Mitigation by Mr. Bororio: Accused is a herds boy and remorseful for the offence. He prays for leniency.

Court: Accused is a first offender .Mitigation noted.

J. R KARANJA,

JUDGE

21/1/2014

Sentence: Accused shall serve 20 years imprisonment

Right of Appeal.

J. R. KARANJA

JUDGE

21/1/2014

22/1/2014

Advocate to be paid Kshs. 1,000.

M. N. GICHERU

DEPUTY REGISTRAR