



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT KITALE.**

**CRIMINAL CASE NO 47 OF 2012.**

**REPUBLIC.....PROSECUTOR.**

**VERSUS**

**ERUKUDI ABUO NAPUNYANG**

**ELIMLIM LOKABWO NAPUNYANG.....ACCUSED.**

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

The two accused, **Erukudi Abuo Napunyang** and **Elimlim Lokabwo Napunyang**, are charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 3rd November, 2012, at Kaliero village, Loima District, Turkana County jointly murdered Loree Erukudi.

The case for the prosecution was that the deceased was son to the first accused (Erukudi) and nephew to the second accused (Elimlim). The two are brothers and on the material date they arrived home at about 7.30 p.m. when the wife to the first accused and mother to the deceased, **Asinyen Erukudi (PW1)**, noted that they had blood on their hands. They washed the hands after they requested for food which was served. They alleged that they had gotten lost when coming home after being asked by Asinyen (PW1) why they had passed a particular route. She (PW1) became suspicious since the deceased had been living in the bush after being chased away from home by his father on allegation of having eaten the family's goats and any attempts by him to return home had been thwarted by his father. He (deceased) survived in the bush by feeding on people's goats which he normally stole. His mother (PW1) suspected that he had been killed by his father.

She went in search of the deceased and found his dead body hanging from a tree. She reported the matter to the area chief, **Titus Nakua Koloji (PW2)**.

The area chief and a group of village elders were informed that the two accused were involved in the death of the deceased and went in search of them. The first to be found was the first accused. He alleged that he was tired with the deceased for his many unlawful acts against neighbours and decided to finish him. He (first accused) took the chief and his group to where the body of the deceased was situated.

The chief noted that the body had strangulation marks on the neck and that there was a piece of rope on the neck (i.e. P. Exh. 1). He said that the second accused was arrested later.

**P.C. Alfred Mwarabu (PW3)**, attached to Lodwar Police Station indicated that the first accused was arrested and handed over to him. He (PW3) went to the scene of the offence and noted that the deceased had been strangled with a rope, a piece of which was found at the scene.

**Dr. Francis Kiiru (PW4)**, produced a post mortem report compiled and signed by his colleagues Dr. Ameyo, who conducted a post mortem on the body of the deceased.

The report indicated that the cause of death was cardiopulmonary arrest secondary to strangulation.

**CIP Evans Omuga (PW5)**, the officer commanding police station (OCS) Lodwar Police Station, investigated the case and thereafter preferred the present charge against the two accused.

Both accused denied the charge. The case for the first accused was that the deceased, his son, had developed bad behaviour of stealing goats belonging to neighbours such that he had on several occasions to pay for the stolen goats. That, the deceased became a hardcore criminal in that not only did he steal livestock, he also raped and defiled women. He also stole Ksh. 12,000/= from him (first accused) and disappeared from home. He went to live in a forest and on the material date, he stole a goat from a neighbour thereby prompting him (first accused) to catch and discipline him by beating him with a stick. He (deceased) thereafter escaped into the forest where he was found a few days thereafter having passed away. The first accused contended that he did not kill the deceased.

As for the second accused, his case was that he was at home on the material date when the area chief went there and informed him that the first accused had committed an offence. He told the chief that he knew nothing about the matter. Later, he reported to the chief at his office and was arrested. He was then charged with the present offence together with the first accused. He contended that he knew nothing about the offence and that the deceased was his nephew and a criminal.

From all the foregoing evidence, the issue arising for determination is whether the two accused were criminally responsible for the death of the deceased.

Both have denied responsibility and as usual, the obligation to establish their supposed guilt lay with the prosecution.

None of the prosecution witnesses and in particular, the mother of the deceased (PW1) nor the area chief (PW2) witnessed the offence. They all relied on suspicion and information to opine that the deceased was killed by the two accused and in particular, the first accused. The motive for the killing was indicated as having been to “finish” the deceased due to his criminal tendencies. Indeed, the chief (PW2) alleged that the first accused told him that he was tired with the deceased and had decided to “finish” him.

In essence, the chief implied that the first accused admitted having killed the deceased.

However, his (chief's) evidence was not sufficient enough nor was it corroborated by any other evidence in establishing that the first accused indeed admitted the offence. In any event, if that were so, the appropriate thing was for the prosecution to extract a confession from the first accused but this was never done thereby implying that there was no admission on his part as alleged by the chief.

The mother to the deceased (PW1) merely suspected the two accused for killing the deceased because they arrived home with blood on their hands and when she went in search of the deceased in a bush, she found his dead body hanging from a tree on a palm tree leaf.

The post mortem report (P. Ex. 2) showed that the deceased died as a result of strangulation. His body was found hanging from a tree by his mother (PW1). The chief (PW2) saw strangulation marks on the body and a piece of rope on the neck.

**P.C. Mwarabu (PW3)** opined that the deceased had been strangled with a rope. He exhibited in court a piece of the rope (P.Ex. 1).

**CIP Omuga (PW5)**, confirmed that the body of the deceased was found hanging from a tree on a rope (P. Ex. 1). He charged the two accused based on the information given by the chief (PW2).

The chief was apparently the person who caused the arrest and arraignment of the two accused for an offence which they denied.

The first accused indicated that he beat up the deceased to discipline him for stealing a neighbour's goats but denied that he killed him as alleged. He said that the deceased disappeared into the forest after the beating only to be found dead a few days thereafter. The second accused indicated that he played no role in the death of the deceased and was at his home on the material date.

Since the deceased was found having been strangled with a rope and nobody saw any of the accused strangling him, it may not be far fetched to opine that the deceased may have committed suicide by hanging himself from a tree using a rope. This explains why the body of the deceased was found hanging from a tree on a rope around his neck.

The evidence by the prosecution against the two accused did not establish that they were criminally responsible for strangling the deceased with a rope thereby causing his death. Consequently, this court must and hereby finds that the prosecution has failed to prove the charge of murder against both accused to the required standard.

Therefore, the two accused are found not guilty as charged and are hereby acquitted.

**[Delivered and signed this 21st day of January, 2014.]**

**J.R. KARANJA.**

**JUDGE.**