

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

HIGH COURT CRIMINAL 2 OF 2013

REPUBLIC PROSECUTOR

VERSUS

1. GABRIEL LONGOLE LOODE

2. NGURUBO EKITELA ACCUSED

J U D G M E N T

The two accused, **Gabriel Longole Loode** and **Ngurubo Ekitela**, are charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 24th December, 2012, at Nakoros village Turkana West District, jointly with others not before court murdered, **Ekaale Ekuwol**.

The case for the prosecution was that on the material date, the deceased engaged in a fight with one Edimuyan and both were injured. Later, the deceased went to Edimuyan to render an apology but in the process, he was set upon and assaulted by a group of young men who included the two accused herein. The first accused (Gabriel) is said to have assaulted the deceased using a stone while the second accused (Ngurubo) is said to have used a hammer.

The deceased suffered serious injuries and was taken to the hospital by the police. He passed away while undergoing treatment at the hospital. His cousin, Raphael Ekulen (PW2), identified his body for postmortem purposes.

P.C Paul Sum (PW3), was among the police officers who took the deceased to hospital. He noted that the deceased had deep cuts on his face, head and arms. He indicated that the deceased was treated in hospital and discharged but that his condition became serious such that he was taken to hospital a second time but passed away while undergoing treatment. Thereafter, the two accused were arrested and charged accordingly.

The two accused denied the offence and raised a uniform defence in which they indicated that they were in a group of people who had gathered under a tree to take a rest when the deceased appeared there is a state of intoxication and fought with people drinking traditional liquor being sold by a lady called Etot. They (accused) were each attacked by the deceased and each fought back in return. Police officers appeared at the scene and took away the deceased saying that they would charge him with assault. He (deceased) attacked and assaulted the police officers while being arrested.

It is apparent from the foregoing defence that there was no denial that the deceased was assaulted and seriously injured. That, the injuries later proved to be fatal as confirmed by the post mortem report (P .Ex 1) showing that the deceased died from head injury. Also not denied is the fact that the deceased was assaulted by a group of people seemingly after having previously fought with a person called Elimuyan. There was indication that it was when the deceased had gone to apologize to Elimuyan that he was set upon and assaulted by the group of people. This was confirmed by a sister to the deceased, Hellen Asekol (PW1).

The basic issue that arose for determination was whether the two accused were in the group of people who assaulted and caused the death of the deceased and if they were part of the assailants, whether they acted with the necessary intention to kill the deceased. The defence raised did not

controvert the fact that the two accused were in the group of people who assaulted the deceased as established by Helled (PW1) and confirmed by investigations carried out by P.C Sum (PW3). Indeed, both accused portrayed the deceased as a drunkard who attacked each one of them and each of them fought back. They indicated that they acted in self defence but this was discredited by the evidence of Hellen PW1) who saw them and others assaulting the deceased without provocation as the return of the deceased to the scene to apologize to Elimuyan could not have amounted to provocation.

On their own admission coupled by the evidence of Hellen (PW1) this court must find that the two accused were in the group of people who assaulted and fatally injured the deceased. However, the circumstances of the case did not point towards an intention by the two accused or any other assailant to kill the deceased.

Consequently, it may safely be stated that the offence established by the provocation against the two accused was that of manslaughter rather than murder.

The two accused are therefore found guilty of manslaughter contrary to section 202 of the penal code and are each convicted accordingly

J. R. KARANJA,

JUDGE

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

J. R. KARANJA,

JUDGE