



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL CASE NO 66 OF 2011.**

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

**VERSUS**

**ROBERT LOROT EKAI.....ACCUSED.**

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

The accused, **Robert Lorot Ekai**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 15th December, 2011, at Kalodicha village, Lokichar-Turkana South District, murdered Kuwesi Mukura.

The case for the prosecution was that on the material date at about 11.00 p.m., the accused proceeded to the home of the deceased and found her with children. He then set upon and assaulted her. He also attempted to assault her son, **James Lopem (PW1)**, who ran into a neighbour's home. He continued assaulting the deceased and thereafter followed her children into the homestead of one Apem who restrained while being assisted by one Ekonan. The accused took off from the home of Apem when a neighbour called Achuka arrived there.

Lopem (PW1), Apem and others returned to the deceased's homestead and found her dead with a head injury.

**Ekusi Kapero (PW2)**, a brother-in-law of the deceased, reported the matter to the police after receiving the necessary information from Lopem.

**Wilson Mukura (PW3)**, son to the deceased, received the necessary information on the following day while in Lodwar-town. He left for Lolachan and also reported to the police. He later identified the body of the deceased for post mortem purposes.

**Benson Elimlim Lopurcho (PW4)**, a motor cycle taxi (boda-boda) operator was at work on 16th December, 2011 at about 4.00 p.m., when he saw the accused being pursued by a group of people as he fled towards the police station. He (PW4) feared that his (accused's) life was in danger and therefore assisted to take him to the police station.

**P.C. Martin Mugambi (PW5)**, was at the police station when the accused was taken there in a motor cycle. He was informed by the accused that he (accused) was being chased by a group of people who suspected him of having murdered the deceased. He (PW5) placed him (accused) under custody to save him from the group whose intention was to lynch him.

**P.C. Eric Mutuma (PW6)**, investigated the case and in the process visited the scene and found the dead body of the deceased in a hut (manyatta) with visible head injuries. He noted signs of a struggle and

learnt that the deceased had been killed by the accused. He removed the body of the deceased to the Lodwar District Hospital and later arrested and charged the accused with the present offence. He visited the scene of the offence on the material date at about 2.45 a.m.

**Dr. Francis Kiiru (PW7)**, produced a post mortem report compiled and signed by his colleague who performed a post mortem on the body of the deceased.

The report indicated that the deceased died from subdual haematoma secondary to severe head injury resulting from assault.

In his defence, the accused denied the offence and stated that he was at Kainuk on the material date when he was informed by a relative that his mother was sick. This was at about 8.00 a.m. At 3.00 p.m., he arrived at Lokichar and proceeded to the local hospital. However, on his way, he was confronted by a group of four people who started assaulting him. He escaped from the group into the local police station where the group of people arrived. He was then locked in the cells and later taken to Kitale Police Station where he was charged with the present offence which he denied.

From all the foregoing evidence, it is undisputed that the deceased was assaulted and fatally injured on the material date and time. It is also undisputed that the assault was unprovoked thereby suggesting that the assailant intended to cause grievous harm to the deceased but this went too far such that the deceased suffered fatal injuries.

Therefore, the issue that fell for determination was whether the accused was the person responsible for occasioning fatal injuries to the deceased. His defence was a denial and an indication that he was nowhere near the scene of the offence when it occurred. However, the evidence by the complainant's son (PW1) placed him at the scene at the material time. He (PW1) had previously known him as a local mason. He saw and identified him as the person who attacked and assaulted his mother. He said that there was bright moonlight on that date and that the accused had followed him outside the house with the intention of also assaulting him.

The rest of the prosecution witness were not at the scene of the offence when it happened. **Benson (PW4)**, They were not in a position to say exactly what went on at the scene. However, they were told that the deceased had been assaulted and killed by the accused whom they knew.

Ekusi (PW2) said that they traced the accused in his house on the following day and that he took off and ran into the safety of police officers.

**Benson (PW4)**, confirmed that he saw the accused being pursued by a group of people armed with crude weapons and decided to assist him into the police station.

Although it was only Lopem (PW1) who implicated the accused, his evidence was cogent and credible. It overruled the defence raised by the accused and reduced it into an afterthought.

The accused was well known to Lopem (PW1). There was nothing to suggest that Lopem acted out of malice and implicated the accused without any reason.

This court must therefore find that it was the accused who assaulted and fatally injured the deceased most likely as a result of a quarrel or a brawl between them as indicated by the investigating officer (PW6) when he stated that he saw signs of a struggle at the scene thereby indicating that a fight had occurred.

Further, Lopem (PW1) was not sure whether the accused and the deceased had quarrelled before the incident.

This court may therefore safely find that although the accused inflicted fatal injuries upon the deceased, his intention was not to cause her death even though he used excessive force in a totally uncalled for situation. His unlawful action amounted more to manslaughter than murder. He is therefore found guilty

of manslaughter and is convicted accordingly.

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

**J.R. KARANJA.**

**JUDGE.**