

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 28 OF 2012.

REPUBLIC ::: PROSECUTOR.

VERSUS

SIMON EKITELA ::: ACCUSED.

J U D G M E N T.

The accused, **Simon Ekitela**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 7th July, 2012 at Naponyes Market Turkana West District in Turkana County, murdered Lokolonyoi Epet.

The case for the prosecution was that on the material date, the deceased and others including the accused were at Naponyes Market drinking traditional liquor chang'aa) when a quarrel and fight erupted between the accused and **Charles Esekon Epen** (PW4). In the process, the deceased attempted to restrain them but the accused turned against and stabbed him with a knife. He (deceased) suffered serious injury and was taken to hospital where he died while undergoing treatment.

The matter was reported to the police leading to the arrest and arrangement of the accused in court.

The case for the accused is that he did not commit the offence but was at Naponyes Market where a group of people were drinking chang'aa. The deceased was in the group and when a brawl erupted at the scene, he (deceased) fought with the accused's friend called "Al queda". He (accused) was also attacked and assaulted. He fell down on the ground and at that juncture the deceased charged at him with a knife. He pushed the deceased away before leaving the scene which was chaotic. He was also injured but on his way to the chief's office, he was confronted by a mob of people who alleged that he had killed a person. He was about to be lynched by the mob but luckily the chief arrived at the scene with police officers. He was rescued from the mob, taken to the police station and later charged with the present offence.

From all the foregoing facts, it is clearly established that the deceased was a victim of a brawl or fight that erupted at a chang'aa drinking den at Naponyes market. He was stabbed with a knife in the process and sustained serious injuries which later proved fatal.

The basic issue for determination is whether the accused was the person responsible for stabbing the deceased and occasioning him fatal injury and if he was the person, whether he acted with malice aforethought.

The defence raised was a denial and an indication that the deceased could have been injured by somebody else or could have injured himself with a knife in his possession.

However, those who were at the scene and were indeed caught up in the commotion that occurred there clearly implicated the accused. Those included **Johnson Kaliba (PW2)** a pedal cycle taxi operator, **Edum Lokironko Enuria (PW3)**, brother to the deceased, **Enuria Lotit (PW5)**, brother to the deceased, **James Lokale (PW6)**, a herdsman and of course Epen (PW4), who fought with the accused. They were all consistent in stating that the deceased was stabbed by no other person other than the accused.

Joseph Ekiru (PW1), assisted to take the injured deceased to the hospital while **P.C. Gene Aila (PW7)**, investigated the case and confirmed that the deceased, the accused and others were involved in a drunken brawl and in the process the deceased was stabbed by the accused thereby sustaining fatal injury. He

(PW7) produced the post mortem report (P. Ex. 1 (a) which showed that the deceased died from severe haemorrhage due to ruptured left cardioartery.

The defence raised by the accused could not stand in the light of the very cogent and credible evidence adduced against him by the prosecution which evidence clearly discredited his version of the story and reduced it into an afterthought. However, the evidence has shown that the death of the deceased was unfortunate and that there was no intention on the part of the accused to kill him.

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

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

J.R. KARANJA.

JUDGE.