

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

CRIMINAL CASE NO. 15 OF 2012

REPUBLIC PROSECUTOR

VERSUS

ONESMUS KAINGU KULOLA

alias MTAWALIACCUSED

RULING

1. The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars stated that on 30th July, 2012 at Mugumoni village, Bate Sub location, Dagamura Location of Kilifi District the accused murdered Katana Karisa Charo. He denied the charge and was represented by Mr. Otara.
2. The prosecution called a total of seven witnesses. Briefly the prosecution evidence was that on 29th July, 2012, three goats belonging to Kenga Charo Kaingu, (PW5) were stolen from the pasture. It would seem that the deceased was a prime suspect. A group of villagers visited his home on the material night and took him away ostensibly to the chief. On the next day his charred body was found on the road a few kilometers away.
3. The only evidence tending to connect the accused with the offence was that of the mother of the deceased,
Bendera
Karisa PW2) who said the accused was among the group that took away the deceased. The difficulty with her evidence is that she was not present when the deceased eventually as she had left home to go and report to the local assistant Chief Daniel Murimi Kiti (PW3). This witness said that PW2 did not name any persons to him as part of the group. PW2 stated during cross-examination that the group was very large and he could not identify them all. She claimed to have spoken only to the accused and another Daniel. It is doubtful that she identified these persons because if she had, she would have reported to PW3 whose help she sought on the same night.
4. In **Terekali s/o Korongozi & 4 Others –vs- Rep (1952) 19 EACA 259** the court stated:

“We have had reason before to commend on the fact, particularly in cases tried in Tanganyika, that evidence of the first complaint made to a person in authority has not been adduced. Such Statements are admissible under Section 157 of the Indian Evidence Act which applies in the Territory. Their importance can scarcely be exaggerated for they often provide a good test by which the truth or accuracy of the later statements can be judge, thus providing a safeguard against later embellishment or the deliberately made-up case. Truth will often [came] out in the first statement taken from a witness at a time when recollection is very fresh and there has been no opportunity for consultation with others.”
5. Even if it was to be believed PW2’s evidence does not prove the identity of the persons who eventually took the deceased away. PW5 stated that he too was unable to identify the group which brought some suspects and recovered goats to his home at 11.00pm. He basically turned hostile during his testimony by denying the incriminating statements earlier made against the accused.

The prosecution evidence is therefore in tatters and the accused cannot be placed on his defence based on such evidence. I do find that the accused has no case to answer and acquit him under Section 306(1) of the Criminal Procedure Code.

Delivered and signed this **31st** day of **March, 2014** in the presence of the accused, Mr. Obaga holding brief for Mr. Otara for the accused.

Court clerk – Samwel.

C. W. Meoli

JUDGE