



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 13 OF 2010.

REPUBLIC ::::::::::::::::::::::::::::::::::::::: PROSECUTOR.

VERSUS

PAULO LOMARAN ::::::::::::::::::::::::::::::::::::::: ACCUSED.

J U D G M E N T.

The accused, **Paulo Lomaran**, is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 27th February, 2010, at Siyoi Trading Centre West Pokot District, murdered Kokinyang Sokolinyang alias “Mawe”. The case for the prosecution was that on the material date at about 4.30 p.m., the deceased, the accused and a lady called Selina or Sally and others were in the house of **Eunice Wanjiku (PW1)**, when a brawl occurred between Selina and the deceased. They fought using sticks but were restrained by Wanjiku. All along, the accused was in a kitchen and after it stopped raining he left the scene with others including the deceased.

At about 9.00 p.m., the deceased and Selina went to **Agnes Nekesa (PW2)**, and purchased chips from her. They were the last customers and so Agnes closed her business and left the two standing nearby. Later, Agnes returned to the scene and found the deceased moving around saying that Parto had killed him. He fell down. Selina was nowhere, Agnes ran to a nearby video shop and alerted people. They found that the deceased was bleeding from the chest. He was taken to the hospital where he died.

P.C. James Kimwetich (PW3), was at the Kapenguria District Hospital where he saw the deceased unconscious and with injuries on his left side before he was pronounced dead by a doctor. P.C. Kimwetich, was handed a knife by members of the public and informed that it was in the possession of the deceased. He (PW3) later arrested the accused and attended the post mortem examination of the deceased.

Selly Chebet (PW4), indicated that the deceased was her husband and that he quarrelled with the accused on the material date at the home of Wanjiku (PW1) where local brew was sold. He (deceased) later followed her at about 7.00 p.m. but she told him that she was to sleep at her sister's place. They parted ways but later, she learnt that the deceased had been stabbed and taken to Kapenguria District Hospital. She led police officers to the house of the accused where he was found and arrested. He led her (PW4) and police officers to a bush where the knife allegedly used to stab the deceased was recovered. It had blood stains.

Komol Kokinyang (PW5), a brother to the deceased, was at home when he was informed of the death of the deceased. He reported to the police and later identified the body of the deceased for post mortem purposes.

Sgt. Peter Terer (PW6), investigated the case after it was reported to him. He gathered that the deceased

had been seriously assaulted and was at Kapenguria District Hospital. He proceeded to the hospital but found that the deceased had died. He noted that his body had a stab wound on the left side of the chest. He contacted the Administration police officers at Siyoi and was informed that the accused had been arrested alongside a woman said to have been the cause of the assault against the deceased.

Sgt. Terer, caused the alleged murder weapon to be analyzed by the Government chemist so that the blood stains thereon could be compared with blood samples removed from the body of the deceased.

A report (P. Exh. 2) was later received from the Government chemist and so was the post mortem report (P. Ex. 3). Both were produced herein by Sgt. Terer who indicated that in the course of investigations, he gathered that a fight had erupted between the deceased and the accused over a lady and this led to the accused stabbing the deceased with a knife.

When called upon to defend himself, the accused denied the offence and said that on the material date he was drinking alcohol together with the deceased who was his friend at Mama Wanjiku's place. It was raining and they were with others sheltering themselves from the rain. They drank "chang'aa" and at 6.00 p.m., he (accused) left the scene and went to his home where he slept. He was awakened in the middle of the night by police officers and Arrested. He was taken to the nearby A.P. Camp where he found a woman friend. Both were taken to Kapenguria Police Station. The woman (PW4) was released after her father paid money to the police. He had no money and was arraigned in court.

From all the foregoing evidence, it is not disputed that the deceased died as a result of being fatally assaulted with a sharp weapon most probably a knife. The post mortem report indicated that there was a penetrating wound on the left upper chest of the deceased and this caused severe haemorrhage leading to cardiorespiratory arrest and therefore the death of the deceased.

The blood samples removed from the body of the deceased did not match with the blood stains found on the alleged assault weapon as indicated in the Government chemist report (P. Ex. 2).

This meant that the blood stains on the alleged murder weapon did not belong to the deceased.

The basic issue for determination was whether the accused was responsible for stabbing the deceased and causing him fatal injuries. The defence raised was a denial and a suggestion that the deceased could have been fatally assaulted by another person most probably the lady called Selly (PW4).

Indeed, none of the witnesses saw the accused in the act of stabbing the deceased. It was evident that all along prior to his death, the deceased was in the company of Selly (PW4). Wanjiku (PW1) saw them fighting while they were at her place. Agnes (PW2) saw them when they went to buy chips from her. She left them together and upon her return found that the deceased had been injured and Selly was nowhere to be seen.

Agnes mentioned that the deceased talked of a person called Parto as one who had stabbed him. She did not know the Parto he was referring to as there were two Partos at Siyoi trading centre.

Selly (PW4) stated that the alleged murder weapon was found in a bush after the accused led them there. However, this evidence was not corroborated by any police officer. It was not therefore clear or certain how the weapon was recovered or whether it was the actual murder weapon given that the report of the Government chemist was negative.

There being no direct evidence to show that the accused was the person responsible for stabbing the deceased to death and there being no credible and sufficient circumstantial evidence linking him to the offence to the exclusion of any other person, it may be safely stated that the prosecution has failed to prove its case against the accused beyond any reasonable doubt.

Consequently, the accused is hereby found not guilty as charged and is accordingly acquitted.

[Delivered and signed this 3rd day of April, 2014.]

J.R. KARANJA.

JUDGE.