



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 23 OF 2010.

REPUBLIC ::PROSECUTOR.

VERSUS

JAMES EKIRU TIOKO::ACCUSED.

J U D G M E N T.

The accused, **James Ekiru Tioko**, is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 8th May, 2010 at Kachibora Trans Nzoia District, murdered Sammy Ewoi Sigei.

It was the prosecution's case that the deceased was employed by **Frank Chesereck (PW1)**, as a motor cycle taxi operator and on the material date he was at work as usual. However, on the following date, his employer (PW1), was informed by his colleagues that he had been killed and his motor cycle stolen.

The matter was reported to the police who were already aware of the matter through **Cpl. Joel Limaero (PW4)**, of Cheranganyi police station who was on night patrol duty with fellow officers when they found the body of the deceased along Kaplamai/Kachibora road near Kirwaa farm. The body was lying in a ditch and was removed to Kitale District hospital mortuary where it was identified by **Joseph Ekwami (PW3)**, a brother to the deceased.

A driver, **Richard Kiptanui Korir (PW2)**, was informed of the theft of the motor cycle and reported the matter to the police at Cheranganyi police station.

Dr. Paul Njamwe (PW5), carried out a postmortem on the body of the deceased and compiled a report (P. Ex. 3) indicating that the deceased died from cardio-respiratory failure due to haemopneumothorax and haemorrhage due to tear through aorta, left lung and open chest wounds.

Sgt Smith Kimathi Njeru (PW6), of Cheranganyi police station investigated the case and in the course of investigations received a report from his colleagues within Uasin Gishu District that two people had been apprehended while in possession of a suspected stolen motor cycle. He proceeded to Yamumbi in Eldoret and gathered that the motor cycle had been stolen within Trans Nzoia. The two people found it its possession were beaten up by members of the public and taken to Moi Teaching and Referral Hospital. A knife (P. Exh. 5) was allegedly recovered from them. They were later handed over to Sgt. Njeru (PW6) but one of them succumbed to the injuries inflicted by members of the public. The remaining suspect who was the accused herein was eventually charged with the present offence.

Sgt Njeru (PW6) gathered that the deceased was hired by two customers to take them to Kaplamai but they later turned out to be robbers. They attacked and robbed him of his motor cycle. He suffered fatal injuries after being stabbed with a knife. The suspect knife (P. Exh. 5) as per the report of the

Government Chemist (P. Exh. 6) had blood stains which matched the deceased's blood group.

In his defence, the accused denied having committed the offence and contended that he knew nothing about it. He said that he was employed by Delta Security Services in Eldoret and was on duty on the material 8th May, 2010. He worked the whole night and on his way home was confronted by a mob of people who had apprehended some suspects. The mob stopped him while he was on his bicycle. They beat him up to the point of losing consciousness. He later found himself at the hospital.

From all the foregoing facts forming both the prosecution and defence cases, it is apparent that the deceased died after being violently attacked and robbed of his motor cycle by persons who had hired him to transport them from one point to another. The incident occurred at night along the Kaplamai/Kachibora road.

None of the witnesses who testified for the prosecution saw the deceased being attacked and robbed of his motor cycle. None of them saw the two people who had hired the deceased to transport them. However, the stolen motor cycle was later recovered in Eldoret and was positively identified by its actual owner, the deceased's employer (PW7).

The investigating officer (PW6) indicated that the motorcycle was recovered by his colleagues in Eldoret while in possession of two people. The accused was said to be one of the two people.

Basically, a person found in recent possession of property which has been stolen would be presumed to be the thief if he fails to offer satisfactory explanation of his possession thereof. Similarly, a person found in recent possession of property belonging to a person who was murdered would be presumed to be the murderer.

So, the issue herein is whether the accused was the person or one of the persons who murdered the deceased while in the course of stealing his motor cycle. Due to the nature of the injuries suffered by the deceased and the circumstances of the case, it was apparent that the offenders acted with the necessary intention to kill and take away the motor cycle.

The accused denied any responsibility for the death of the deceased and implied that he was mistakenly arrested by a mob of people who seem to have been looking for criminal suspects. He thus denied that he was ever arrested while in possession of the deceased's motorcycle. It therefore fell upon the prosecution to prove otherwise and discredit the accused's defence by providing evidence strong and credible enough to establish that the stolen motorcycle was recovered from the accused and was found in his possession at the time of his arrest. Such evidence of recovery and possession would provide indirect evidence linking the accused to the murder of the deceased but was lacking herein.

The investigating officer (PW6) did not recover nor arrest the accused in the first instance. He said that the motorcycle was recovered by his colleagues based in the county of Uasin Gishu and that the accused and another were handed over to him as suspects.

None of the officers from Uasin Gishu was called to testify and shed light on how the motorcycle was recovered and from whom. The absence of such evidence raised tremendous doubt with regard to the alleged recovery of the motorcycle from the accused and his possession of the same a few days after its theft in the county of Trans Nzoia.

There was indeed no evidence of recovery and possession of the motorcycle against the accused. His arrest and arrangement in court was apparently not justified as it was based on mere suspicion.

Ultimately, it suffices to hold that the prosecution failed to discharge its burden of proving beyond reasonable doubt by way of sufficient and credible direct or indirect evidence that the accused was one of the two persons suspected to have murdered the deceased.

Consequently, the accused must be accorded the benefit of doubt and be found not guilty as charged. He

is therefore acquitted and set at liberty.

[Delivered and signed this 29th day of May, 2014.]

J.R. KARANJA.

JUDGE.