



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 22 OF 2013.

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

VERSUS

ARON KIBET LOTOWIT)

JOSEPH TALAM LOTOWIT) ::::;::::: ACCUSED.

J U D G M E N T.

The first accused, **Aron Kibet Lotowit**, together with **Joseph Talam Lotowit**, were charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 1st July, 2013 at Kamorou village, West Pokot county, jointly murdered Alice Chepokilipa Loimit. The case for the prosecution was that on the material date, Alice Chebet John (PW2), a maize mill operator, was at her place of work when she was attracted by screams from her homestead. She rushed to the scene and found the first accused there with the body of the deceased lying on the ground a few metres away. She noted that the first accused was angry and was holding a machete (panga). She left the scene after being engulfed with fear after the first accused remarked that he had finished somebody.

A herdsman, **Ibrahim Pterit (PW3)**, lost his cow to thieves on the 29th June, 2013. The animal was later recovered while in the possession of a daughter of the deceased herein. He collected his animal and went home only to later, learn that the deceased been slashed and killed allegedly by the first accused.

Cpl. Mwangangi Katumo Mutemi (PW4), was on duty at Keringet Police post on the material 1st July, 2013, when the first accused arrived there with a panga (P. Exh. 3) and alleged that he had killed the deceased while separating her from his father (the second accused) while the two were quarrelling. He (first accused) was arrested and taken to Kapenguria Police Station.

Earlier in the day, the deceased had proceeded to the police post and enquired from **P.C. Wilson Kakuko (PW4)**, about the alleged arrest of her daughter for theft of a cow. She went away after being informed that her daughter was not under arrest and that no theft report was made.

Cpl. George Ogweno (PW6), of Kapenguria police station investigated this case and gathered that the deceased had quarrelled with the second accused over allegation of theft of a cow by her daughter and in the process, she armed herself with a machete (panga) and confronted the second accused after which the first accused went to the rescue of the second accused, snatched the panga from the deceased and slashed her with it thereby killing her on the spot.

Cpl. Ogweno, collected the body of the deceased from the scene and later arranged for a post-mortem examination prior to having the first and second accused charged with the present offence.

Dr. Rono Nicholas (PW1), carried out the post-mortem examination and compiled the necessary report (P. Exh. 1) indicating that the cause of death was severe and fatal head injury consistent with assault with a sharp object.

At the close of the case for the prosecution, this court ruled that the second accused had no case to answer and acquitted him accordingly. The first accused was paced in his defence in which he denied the offence and stated that he saw the deceased confronting his father with a panga. He rushed to the rescue of his father and held the deceased. She put up a struggle but he managed to wrestle away the panga from her. She continued with the struggle but was unfortunately cut and injured by the panga when she fell down.

Thereafter, he proceeded to the police and reported the matter but was later arrested and charged with the present offence. He contended that he had no intention to kill the deceased.

From all the foregoing evidence, it was apparent that the deceased died at the hands of the first accused even though nobody saw him in the act of slashing the deceased with a panga.

Nonetheless, he was found by Alice (PW2) holding a panga and standing near the body of the deceased. He was also heard remarking that he had killed somebody and indeed went to Cpl. Mwangangi (PW4) to report that he had killed the deceased while she was quarrelling with his father. He indicated as much in his defence and implied that the deceased was the aggressor and that he merely went to the rescue of his father and snatched the panga from the deceased. He also implied that the deceased was killed when she fell down and was injured by the panga. Yet, he at the same time contended that he did not intend to kill the deceased.

In essence, the first accused did not deny that he killed the deceased. He contended that his unlawful action was devoid of malice aforethought.

Indeed, from the circumstances leading to the death of the deceased, it was clear that the first accused acted irrationally and foolishly by using violent and excessive force against an old lady thereby causing her death. His intention may not have been to kill the deceased but to protect his father.

However, the manner of protecting his father from the deceased was most unreasonable and reckless such that it ended up with a person losing her life.

The prosecution, it may be stated, has succeeded in establishing a lesser offence of manslaughter against the accused. Accordingly, the accused is hereby found guilty thereof and convicted.

[Delivered and signed this 25th day of June, 2014.]

J.R. KARANJA.

JUDGE.