



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 25 OF 2008.

**REPUBLIC :::
PROSECUTOR.**

VERSUS

LABAN KEMEI

LIMO LIMAKOL

LIMAKOL KINJELITUM LUKOULE

FRANCIS CHANGWONY

HENRY BIWOT ALIAS MACHO NNE

MARTIN DEARENG

STEPHEN NGURATUKEI SANGSANG ALIAS CHARLES SANGSANG::::::::::::ACCUSED

J U D G M E N T.

The seven (7) accused were charged upon the information dated 15th May, 2009, with murder, contrary to section 203 read with section 204 of the penal code, in that on the 17th July, 2008 at Sokomoko trading centre Kaisagat location West Pokot District, murdered Charles Losiareng alias Sotin.

The case for the prosecution arose from the following facts:-

On the material date at about 5.00 a.m., a village at a place called Sokomoko in Kapenguria was awakened by screams and shouts in the air. The shouts indicated that a thief had been apprehended. Most villagers rushed to the scene. They included **Philip Kalekemo (PW1)**, who on arrival found the deceased locally known as “**Sotin**” having been injured with blood all over his body. He was alleged to be the thief. A luggage was placed on his back. Philip (PW1) also found the first, third and fourth accused at the scene. The first accused (**Laban Kemei**) had a panga (machete) which he used to cut the deceased after which he and the third accused (**Limakol Kinjelitum Lokomle**) went and reported that they had apprehended a thief. The fourth accused (**Francis Changwony**) called for a tyre to be used to set the deceased on fire.

Rose Cheptoo (PW2), also arrived at the scene and found a collection of firewood placed on the body of the deceased who was her cousin. She found the second accused (**Lima Limakol**) at the scene and

pleaded with him to take the deceased to the police before he was burnt. She also saw the first accused and the seventh accused (**Charles Sangsang**) at the scene. She left the scene and learnt on the following day that the deceased had been burnt. The deceased's widow, **Peris Cheling Losiareng (PW3)**, also heard the screams and was immediately there after approached by the deceased's father and wife to the seventh accused and informed that the deceased was about to be lynched after being caught in the act of stealing. She rushed to the house of her in-laws to convey the information and later broke down after seeing fire and the body of the deceased badly burnt.

Michael Kiplimo Kaita (PW4), found the deceased on the ground with blood oozing all over his body. There was a luggage of maize tied to the body. The maize was allegedly stolen from the farm of the third accused who was at the scene. He (accused three) left and went to report the matter to the chief. He (PW4) left the scene when people were calling for the lynching of the deceased.

Jackson Kibet (PW5), was awakened by a neighbour to see a person being burnt at the local trading centre. He proceeded to the scene and found that a person had been burnt for stealing maize. The person was the deceased and he (PW5) saw one Dennis Kemei, one Limo and the first accused fueling the fire. He also saw the second and third accused at the scene and then made a phone call to the brother of the deceased who worked in Busia.

Jacob Plimo (PW6), arrived at the scene and found a crowd of people. He saw the deceased crying for help and asking for water to drink. He brought the deceased some water but the crowd prevented him from giving it out. He saw the first, second and seventh accused at the scene. The first and second accused were using a panga to cut the deceased who was tied with a luggage on his back and frogmarched to the local trading centre on the way to the chief's office. The crowd was calling for the lynching of the deceased. Some of the people returned from the chief's office saying that the chief had authorized them to lynch the deceased. A village elder who was the fifth accused (**Henry Biwot alias "Macho Nne"**), agreed that the deceased should be lynched. He (accused five) and the second accused fetched a tyre while the first and seventh accused fetched firewood with one Kimechol fetching petrol. The tyre and the firewood were placed on the body of the deceased and one Dennis ignited the fire. He (PW6) ran away on seeing the fire.

Gideon Kimutai (PW7), saw a person carrying a big sack of maize and was tied on his hands. He was sitting down. He (PW7) then heard people asking for firewood to burn the thief. He saw the first and second accused at the scene and one Dennis. The three went to fetch firewood and later, the second accused and Dennis ignited the fire. He (PW7) ran away when the fire started.

P.C. Wilson Ndirangu (PW8), was on duty at Kapenguria police station when he received a report on the lynching of a person at sokomoko. He proceeded to the scene with colleagues and found a crowd of people numbering about twenty (20).

He also found the deceased lynched to the extent that he could not be recognized. A post mortem was later conducted on the 21st July, 2008 and the report was accordingly prepared. He produced the same (P. Exh. 1) and in the course of investigations learnt that the deceased had been found stealing in a farm but declined to be taken to the police. He (deceased) was therefore lynched by members of the public.

He (PW8) indicated that the seven accused were suspected, arrested and charged with the present offence.

The conclusion of the case for the prosecution led to the seven accused being placed on their defence. They all gave unsworn statement with the first accused stating that he was awakened by his father (the third accused) and informed that a person was stealing maize from their farm. They all went to the farm accompanied by a sibling (accused two) and caught the thief. They had already raised alarm thereby prompting villagers to arrive at the scene. He (accused one) was directed by his father to take the thief to the police but on the way to the police station accompanied by a group of villagers. The villagers increased in number and emotions on their part ran high. They ordered him (the first accused) and the second accused to release the thief to them but despite their attempts to protect and hand over the thief to the police, the villagers overcame them and grabbed the thief whom they started to assault while

threatening to injure him (first accused) and second accused if they intervened. They (villagers) went ahead to lynch the thief whom he (first accused) learnt was the deceased herein locally referred to as Sotin.

The first accused contended that neither him nor his father (accused three) and brother (accused two) participated in the lynching of the deceased. They were however, later arrested and charged with the present offence which they did not commit.

The second and third accused fully adopted the defence of the first accused as their own respective defence.

The third accused contended that they made all efforts to protect the suspect thief but were overcome by villagers who lynched him. He (accused three) notified the area chief prior to the lynching but he (chief) delayed in arriving at the scene resulting in the lynching and killing of the deceased.

The fourth accused stated that he heard screams and proceeded to the scene where he found a thief having been apprehended and being taken to the police by the villagers accompanying the third accused and his sons. He (accused four) returned to his home and was on the following day arrested and charged with the present offence which he did not commit.

The fifth accused implied that he was at home asleep on the material date and on the following day he attended a board meeting at a nearby school. It was at that juncture that he heard that a thief had been lynched at the local market. He later proceeded to the said market and found a group of people conversing about the incident which had occurred in the previous night. He was arrested when a police vehicle suddenly arrived at the market and later charged with the present offence which he did not commit.

The sixth accused, **Martin Deareng**, indicated that he was at Sokomoko playing a game of pool in a local bar when he was arrested by the police and later charged with the present offence which he did not commit. The seventh accused said that his name was Stephen Nguratukei Sangsang and was at home asleep when he was awakened by dog barks. He enquired and found that the dogs were fighting over a cow placenta. A cow had just given birth. He thereafter heard screams from a neighbour's house. He ignored the screams and returned to bed. He was on the following day informed that a thief had been apprehended during the night. Later, police officers went to his home and asked for his brother who was absent. He was taken to the police station instead and was later charged with the present offence which he did not commit.

In essence, all the accused denied the offence.

The obligation to establish the guilt of all the accused or any one of them lay with the prosecution and the prosecution only. There was no obligation on the part of the accused to prove their innocence.

From the evidence, it is apparent that the deceased was suspected to be a thief and therefore fell victim to mob lynching commonly referred to as mob justice.

Whether or not the deceased was indeed a thief was not the main issue. The main issue was whether he was unlawfully killed by persons who perceived him to be the thief. Indeed, the lynching mob acted unlawfully by taking the law into their own hands. They had no right whatsoever to kill by lynching a person deemed to be a thief. As responsible citizens, their duty was simply to apprehend the suspect and hand him over to the law enforcement officers.

What happened in this case that the deceased was apprehended for being a thief but was lynched before he could be taken to or rescued by law enforcement officers. A charged crowd of people was responsible for the heinous crime which they committed with wanton abandon thereby indicating that they acted with the necessary intention to kill the deceased. They indeed murdered the deceased.

The guilt or otherwise of the accused would thus be determined by their being part of the crowd and their respective participation in the actual lynching of the deceased.

Being part of the crowd would not by itself be a factor in determining guilt for the simple reason that it is common knowledge in this county that the apprehension of a suspect thief attracts a large crowd of people some of whom may be present at the scene and not participate in lynching a suspect. Such persons may want to save a suspect but they would restrain themselves for fear of the wrath of the charged crowd which may shift to them.

It was therefore the prosecution's obligation to prove beyond reasonable doubt that the seven accused were part of the crowd which gathered at the material scene after the apprehension of the deceased and that all or any one of them participated in the actual lynching of the deceased.

The defence raised by nearly all of them was that they were or appeared at the scene during or after the apprehension of the deceased. They however, vehemently denied participating in assaulting and lynching the deceased and implied that this was done by other villagers who were highly charged due to the deceased's unlawful action of stealing maize.

The first, second and third accused are members of one family i.e. a father (accused three) and his two sons (accused one and two). It was in their farm that the deceased was allegedly apprehending while stealing maize. They apprehended him but said that he was "grabbed" from them by the charged crowd while they were taking him to the authorities. They indicated that their efforts to save the deceased proved futile to the extent that they were threatened with injury by the charged crowd.

The fourth accused, indicated that he arrived at the scene and saw the deceased being taken to the police by villagers and the third accused and his sons. He (accused four) did nothing but to return to his house.

The fifth accused indicated that he was not even at the scene when the deceased was lynched and only heard about it on the following day.

The sixth accused also indicated that he was not at the scene at the material time while the seventh accused implied that he was mistaken for his brother and arrested even though he did not proceed to the material scene. The evidence against the first accused was that of Philip (PW1), Rose (PW2), Jackson (PW5), Jacob (PW6) and Gideon (PW7)

Philip said that the first accused had a panga which he used against the deceased. Rose merely saw the first accused at the scene.

Jackson said that the first accused and others fuelled the fire while Jacob said that the first accused had a panga which he used against the deceased. Gideon merely saw the first accused at the scene. The deceased died from burns. He did not die from wounds inflicted by pangas. Therefore, the fact that the first accused had a panga and may have used it against the deceased was irrelevant in holding that he caused the death of the deceased. His usage of the panga against the deceased was also doubtful as other witnesses who saw him at the scene did not see him use a panga to cut the deceased. This position would also apply to the second accused who was merely seen at the scene by Rose (PW2), Kibet (PW5), Jacob (PW6) and Kimutai (PW7).

Kibet (PW5) said that he saw the first accused fueling the fire but this was doubtful when considered against the evidence of other witnesses who saw the first accused at the scene.

Kimutai also alleged that the fire was ignited by one Dennis and the second accused. However, the involvement of the second accused in igniting the fire was doubtful consideration being given to the evidence of other witnesses who saw him at the scene.

The person called Dennis featured prominently with the regard to the setting of the fire but he was neither called to testify or charged with the accused herein.

The evidence against accused three, did not implicate him with playing a role in the lynching of the deceased. He was the one who found the deceased stealing maize from his farm and caused him to be apprehended but not to be lynched. He actually intended to do the right thing, that is to take the deceased to the police or the chief but the charged crowd would hear nothing of that. This was confirmed by Philip (PW1) and Michael (PW4). Indeed, the third accused made a report to the area chief whose delay in arriving at the scene gave the crowd a perfect opportunity to lynch the deceased.

With regard to the fourth accused, the evidence against him was essentially that of Philip's (PW1) who said that the fourth accused called for a tyre to lynch the deceased. This was however, in contradiction with the evidence of other witnesses such as Jacob (PW6) who alleged that the tyre was fetched by the second and fifth accused. Therefore, Philip's evidence against the fourth accused could not be relied upon and so was Jacob's evidence against the fifth and second accused.

The fifth accused was a village elder, he was implicated only by Jacob (PW6) whose evidence has already been found wanting.

The sixth accused was not implicated with the lynching of the deceased by any of the witnesses. Nobody even said that they saw him at the scene.

The seventh accused was seen at the scene by rose (PW2) and Jacob (PW6) but was never implicated with the act of lynching the deceased and causing his death.

Basically, the key prosecution witnesses were Philip (PW1), Jackson (PW5) and Jacob (PW6). However, they could not be relied to prove beyond reasonable doubt that the seven accused or any one of them actually participated in the lynching of the deceased. They (PW1, 5 and 6) were discredited in the course of cross-examination with regard to how and under what circumstances they were able to pick out the accused as being part of the crowd which actually lynched the deceased. The presence of any person at the scene did not mean that they participated in the lynching otherwise the witnesses would also have been charged along with the accused.

The investigations carried out by P.C. Ndirangu (PW8) did not reveal the actual persons involved in the lynching of the deceased. What was revealed was that the deceased was found stealing maize in a farm but refused to be taken to the police and was therefore lynched by members of the public.

Members of the public meant everybody at the scene if not the village. It was not therefore justified for the police to pick up a few people (accused) at the behest of others (witnesses) and charge them with the murder of the deceased. The incident was rather sad and unfortunate but what the police did was to throw the accused to the court so that they may establish their innocence. Undoubtedly, the police had insufficient evidence against the accused. The best they could have done is call for a public inquest of the circumstances which led to the death of the deceased and thereafter charge persons or person found culpable.

In sum, the prosecution case against the seven accused was not established beyond reasonable doubt for a conviction. Consequently, all the seven accused are hereby found not guilty as charged and are accordingly acquitted.

[Delivered and signed this 5th day of August, 2014.]

J.R. KARANJA.

JUDGE.