



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
CRIMINAL CASE NO. 42 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

ESINYEN EKIRU.....ACCUSED

J U D G M E N T

The accused, **Esinyen Ekiru**, faces a charge of murder, contrary to section 203 read with section 204 of the penal code, in that on the 13th October, 2012, at Rukruk Manyatta Lowerengah Turkana County, jointly with another not before court murdered Elizabeth Lojore.

The case for the prosecution was that on the material date the deceased arrived home in a state of intoxication and in a jolly mood and due to tiredness she slept on the ground outside the door. Her aunt, **Monica John Ekiru (PW2)**, entered the house and slept but was suddenly awakened by someone shouting her name.

The person shouting was the deceased. She shouted that she was being killed. Monica (PW2) went outside the house with a torch and was informed by the deceased that she (deceased) had been assaulted by two people. She (PW2) saw the accused and another sleeping outside the house and questioned them. They both denied having assaulted the deceased who was wailing in pain.

On the following day, Monica (PW2) sought the help of one Ekalale who ordered the accused and another to put the deceased into a wheelbarrow and take her to hospital. Monica accompanied the deceased to the hospital but on arrival she was told by the doctor that the deceased was dead.

The accused was arrested as it was alleged that he was the person who injured the deceased. Monica did not however, know the actual person who injured the deceased.

Dr. Francis Kiiru (PW1), produced a post mortem report (P. Exh. 1) prepared and signed by his colleague Dr. Okemwa.

The report indicated that the cause of death was hemorrhage secondary to lacerated liver leading to cardiovascular collapse.

The doctor (PW1) indicated that the cause of death would be consistent to a blunt injury on the abdomen caused by an assault with a blunt object or by a fall.

Cpl. Amos Kibet (PW3), took over the investigations of the case from a colleague after statements had

been obtained from all the witnesses. He produced a medical report (P3 form) showing that the accused was found to be mentally fit to stand trial.

The P3 form was marked as P. Exh. 2.

In his defence, the accused denied the offence and stated that he was asleep on the material date at about 11.00 p.m. when he was awakened by Monica (PW2) and asked to assist carry the deceased into the house after she (deceased) had been injured by an enemy from Ethiopia. He went back to sleep after providing the necessary assistance.

On the following morning, he (accused) was requested by Monica to take the deceased to hospital on a wheelbarrow. He complied and took the deceased to Lowerangok dispensary where she was admitted. However, an administration police officer appeared at the hospital and arrested him. He was taken to the local A.P. Camp where he was released by the area chief and taken back to the hospital.

They found the deceased still undergoing treatment and on being questioned by the chief she indicated that she was assaulted by an Ethiopian enemy and not the accused who merely acted as a good Samaritan to her. The chief went away but the same administration police officer re-arrested him (accused) and took him to Lokitaung police station where he was charged with the present offence which he did not commit.

From all the foregoing evidential facts, it is apparent that the deceased died as a result of an injury inflicted on her on the material date. The suggestion given by the prosecution and the defence was that the injury was inflicted upon the deceased by an individual human being.

The issue for determination is whether the injury was inflicted upon the deceased by the accused.

The defence raised by the accused was a denial and a suggestion that an Ethiopian enemy was responsible for the deceased's fatal injury. This line of defence was not rebutted or discredited by the prosecution in the light of the evidence by Monica (PW2) who was apparently the prosecution's key witness. She did not know who assaulted and injured the deceased other than suspecting the accused and another person who were sleeping outside a house near where the deceased was assaulted.

If anything, Monica (PW2) appeared to have agreed with the accused's defence when she stated in cross-examination that bandits from the Merille tribe of Ethiopia normally attacked the area and kill people. She said that the deceased shouted that she was being killed by an enemy and later said that she did not know the person who injured her as she was very intoxicated at the time.

Monica (PW2) indicated that the deceased and the accused enjoyed a cordial relation and that before she died, the deceased said that no action should be taken against the accused.

In essence, the prosecution evidence through Monica exonerated the accused by showing that he was not the person who inflicted the fatal injury upon the deceased.

Consequently, the prosecution's case against the accused remained unproved. The accused is therefore found not guilty as charged and is hereby acquitted.

[Delivered and signed this 17th day of December, 2014.]

J.R. KARANJA.

JUDGE.