



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL CASE NO. 29 OF 2010.**

**REPUBLIC ::: PROSECUTOR.**

**VERSUS**

**TEPERE LOKWAPUS NGOLENGOLE )**

**MONICA LOKEDINGOLE LOKWANG ) ::::::::::::::::::::::::::::::ACCUSED.**

**J U D G M E N T.**

The accused **Tepere Lokwapus Ngolengole** and **Monica Lokedingole Lokwang**, are charged with murder, contrary to section 203 read with section 204 of the penal code in that on the 4th May, 2010, at Rino village Central Pokot District, murdered Rokokwang Lalaita.

The case for the prosecution was that on the material date, the deceased arrived at the home of the first accused (Tepere) from a livestock market and found his wife (the second accused) there. The first accused and his wife, **Chepochepus Tepere Everlyne (PW3)** were present. The deceased and his wife engaged in a quarrel and in a fit of anger, the deceased set their house on fire while children were therein. His wife questioned his action and it was then that the first accused wailed, screamed and said that the deceased had stabbed him with a knife. He was told by his wife (PW3) to go to hospital while she remained at home. She later proceeded to hospital as she was not feeling well. She much later heard that the deceased had died but did not know what had happened to him after her husband complained that he had been stabbed with a knife.

**IP Patrick Anyango (PW1)** received a report that the deceased had been murdered. He proceeded to the scene with his team and found the body of the deceased lying down in a pool of blood with a cut on the head and the head appearing as if it had been smashed. He (PW1) carried out preliminary inquiry and learnt that the deceased stabbed the first accused with a knife and in retaliation the first and second accused ganged up and killed the deceased.

**CPL. Edward Gonzaga (PW2)**, investigated the case and in the process found that the two accused were involved in a fight with the deceased after the deceased had stabbed the first accused with a knife. He then decided to charge the two accused with the present offence.

**PC. Jeremiah Muli (PW4)**, produced the post-mortem report (P. Exh. 4) which showed that the deceased died from cardio-respiratory arrest due to severe head injury due to assault by a blunt object. He (PW4) also produced P3 forms (P. Exh. 5) which showed that the two accused were medically examined

and found to be fit to stand trial.

Both accused denied the offence. Accused one indicated that he was in his house at 11.00 p.m. when he was awakened by screams being made by the second accused. They lived in one homestead but in different house. He (first accused) dashed out of his house and found the second accused's house on fire and some drunkards shouting loudly. He entered the burning house and rescued the children therein. It was then that he was attacked and stabbed with a knife by the deceased, He was urged by the many villagers at the scene to go to hospital. In the meantime, the second accused ran away from the scene in search of help. He proceeded to Sigor police post after being discharged from hospital and while there, three people appeared and reported that a person had been killed at his (first accused's) home. His sister also appeared at the police post and both were arrested and taken to Marich police station before being arraigned in court.

The second accused indicated that the deceased arrived home in a state of intoxication and threatened to kill her or burn their house. He vowed that he would not sleep until he killed somebody. He picked a piece of burning firewood and set their house on fire. She (accused two) ran out screaming and holding one of their children. Her brother (first accused) came to the rescue of the other children. She ran away from the scene and went to sleep at a neighbour's house and did not know what happened at the scene thereafter. She returned on the following day and was informed that people had fought and that her brother had been injured and taken to hospital. She did not go to her homestead and instead went to hospital and was told that her brother had gone to the police. She proceeded to the police station when people arrived there and said that the person who had fought with her brother had died. The said persons was her husband, the deceased. She was later arrested together with her brother and arraigned in court.

From all the foregoing evidence, it is apparent that the deceased died after being assaulted and seriously injured. The Post Mortem Report (P. Exh. 4) confirmed as much and indicated that the cause of death was actually cardio-respiratory arrest due to severe head injury caused by an act of assault.

It is also apparent that the injuries occasioned upon the deceased were as a result of a fight between him and the first accused and most likely the second accused and others. No independent witness was called to ascertain who were exactly involved in the fight and who actually struck the fatal blow which caused severe head injury to the deceased who actually was the person responsible for starting the fight or the reaction which led to his death after he stabbed the first accused with a knife.

The evidence by the police officers (PW1 and PW2) suggested that most people who were at the scene during the fight ran away and only a handful remained. Accordingly to Cpl. Gonzaga (PW2), the investigations officer, they had no clue as to what happened at the scene and that the only persons they found at the scene was the first accused's wife (PW3).

She (PW3) indicated in her testimony that she did not know what happened after the deceased stabbed her husband (first accused) with a knife. It was only later that she heard that the deceased had died.

**Cpl. Gonzaga (PW2)**, did not really find out the exact circumstances which led to the death of the deceased other than saying that a fight erupted at the scene. This position also applied to IP Anyango (PW1). The two resorted to conjecture to opine that the two accused ganged up against the deceased and killed him. There was no evidence whatsoever to establish that fact or even the fact of a fight between the deceased and the two accused yet the evidence suggested that other persons could also have been at the scene.

Consequently, it cannot be said with absolute certainty that the two accuseds are the persons who inflicted fatal injuries upon the deceased. The prosecution has failed to prove its case beyond reasonable doubt for a safe conviction of the two accused.

With regard to the evidence of the first accused's wife in relation to section 127 (3) of the Evidence Act, it is the opinion of this court that there was no prejudice occasioned to the two accused by her being called as a prosecution witness. She was a competent and compellable witness for either the prosecution or the

defence. After all, her evidence did not implicate either accused. She was unaware of how the deceased died.

In the upshot, the two accused are found not guilty as charged and are accordingly acquitted and set free unless otherwise lawfully held.

**[Delivered and signed this 11th day of December, 2014.]**

**J.R. KARANJA.**

**JUDGE.**