



REPUBLIC OF KENYA

High Court at Kitale

Criminal Case 3 of 2008

REPUBLIC..... PROSECUTOR.

V

JOSEPH ANKOLE..... ACCUSED.

J U D G M E N T.

Joseph Ankole (herein the accused), is charged with murder contrary to section 203 as read with section 204 of the penal code, in that on the 7th May, 2007 at Chepkomiswo location West Pokot murdered Samuel Lokimangar. The case for the prosecution was that on the material date at about 7.00 a.m., **Christopher Yego (PW1)**, was called by the accused, his elder brother, and together with another brother called Richard, they went to see him (accused). They found the accused armed with a stick and machete (panga). He did not talk to Richard but he asked Christopher to carry the body of their uncle, the deceased herein.

Christopher enquired as to what had happened to the deceased and was informed by the accused that he (accused) had killed him because he (deceased) wanted to snatch away their land.

Both the accused and Christopher assisted by Richard carried the body to a bush at a place called Cheptais.

Samuel Longoringole (PW2), was at his home when he was informed by the accused's mother that her sons had killed their uncle. He went and found the accused and his brother Richard at their home. They confirmed to him that they had killed their uncle. He demanded to be shown the body but at that juncture, the accused took off. The body was found thrown in a bush near a river.

Samuel (PW2) noted that the body had a cut on the head between the eyes and nose.

Francis Lonrimongora (PW3), a brother to the deceased identified the body of the deceased for postmortem purposes.

Ngoriakou Pelenyang (PW4), was among the members of the public who found the body of the deceased at a bush near a river while **Christine Chenguo (PW5)**, the accused's mother, had earlier been drinking alcohol together with the deceased and the accused. She left them drinking and went to sleep but at about 2.00 a.m. She was awakened by her sons Richard and the accused. They told him that they had quarrelled with the deceased. On the following day, she reported the matter to the area chief. Richard (now deceased) was arrested but not the accused who had already left home before the arrival of the chief.

The deceased was father to **Caroline Chepkemoi (PW6)**, who learnt that he had been beaten up and witnessed the arrest of Richard.

Joseph Loret Yarang (PW7), the area chief of Chepkopei location found the accused in his location and arrested him on 15th February, 2008.

P.C. David Kibet (PW8), investigated the case after having recovered the body of the deceased near a seasonal river. He noted that the body had been burnt and buried with sisal leaves. He also noted a deep cut wound on the right side of the neck. He later preferred the present charge against the accused.

In his defence, the accused denied the offence and stated that he was in Kitale town on the material date selling chickens. He returned home at about 5.00 p.m. and remained at the local trading centre upto 8.00 p.m. Thereafter, he proceeded to his home where he found his mother and some neighbours taking alcohol. He later ate food with the deceased. Thereafter, they all drank "changaa" (traditional liquor). His (accused's) mother went to sleep after being intoxicated. She was later followed by the deceased. He (accused) became so drunk that he lost his senses. His brother Richard told him that his uncle (deceased) had become sickly after taking alcohol. Later, he (accused) was informed that his uncle had died. The matter was reported to the chief. He feared for his safety and went away. He was later arrested and charged.

From all the foregoing facts adduced by both the prosecution and the defence, it is evident that the

deceased had earlier been well and healthy before he met his death. He was with the accused and others taking alcohol before his dead body was recovered in a bush near a river with visible injuries on the head and neck. This was a clear indication that he met a violent death occasioned to him by the unlawful act of an individual or individuals. The injuries on the body of the deceased strongly suggested that he was assaulted with a dangerous sharp weapon thought to be a machete (panga).

The big question is whether the prosecution has discharged its burden of proof by establishing beyond reasonable doubt that the deceased was murdered by the accused. Indeed, it was not disputed that the person or persons who killed the deceased acted with malice aforethought as demonstrated by the injuries inflicted on his body and the manner in which the body was found in a bush near a river.

The defence raised by the accused was a total denial of his involvement in the murder of the deceased and a suggestion that the deceased may have died from the effects of drinking too much alcohol. The suggestion was however, overruled by the fact that the deceased's body was found with serious injuries on his head and neck thereby implying that he was slashed to death by a person using a sharp weapon. However, none of the prosecution witnesses identified the accused as having been the murderer or one of the murderers. It would appear that he was implicated along with his late brother Richard by their mother (PW6) when they informed her that they had quarrelled with the deceased on the material date. She said that when the matter was reported to the area chief, the accused disappeared from the scene leaving behind his brother Richard who was subsequently arrested.

Chief Joseph Yarang (PW7) arrested the accused on 13th February, 2008 (almost a year after the death of the deceased) after learning that he (the accused) was a murder suspect hiding at his mother-in-law's home situated in the chief's administrative area.

Samuel (PW2) received information from the accused's mother that the accused had killed the deceased. He (PW2) talked to the accused and his brother Richard and they both confirmed to him that they had indeed killed the deceased. They volunteered to take him to where the body was but in the process, the accused escaped.

Yego (PW1), a brother to the accused and Richard indicated that he was forced by the accused to assist in carrying the body of the deceased to a bush at a place called Chepkoris. He (PW1) also confirmed that the accused told him that he (accused) had killed the deceased because he wanted to snatch away their land.

The foregoing evidential facts from the accused's mother (PW6), the chief (PW7), Samuel (PW2) and Yego (PW1) clearly indicated that the accused may have participated in the murder of the deceased despite his defence to the contrary.

The said prosecution witnesses indicated that the accused freely accepted responsibility for the death of the deceased even though nobody spotted him in the act of slashing the deceased to death. There was no direct evidence against him but his statement to his mother and others coupled with his disappearance from the scene after the murder of the deceased provided credible and sufficient circumstantial evidence

against him. Why would the accused disappear from the scene and remain out of the scene for almost one year when his name was mentioned to the authorities as a possible suspect? His action of disappearing was of course a reflection of his guilty consciousness and was sufficient circumstantial evidence establishing beyond reasonable doubt that he was criminally responsible for the death of the deceased either on his own or acting in concert and with a common intention with his late brother Richard (see, **Malowa vs. Rep. (1980) KLR 110**).

Consequently, the prosecution has discharged its burden of proof against the accused.

The accused is thus found guilty as charged and is convicted accordingly.

[Delivered and signed this 30th day of April, 2013.]

J.R. KARANJA.

JUDGE.