

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 23 OF 2012.

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

VERSUS

NAKALALE EWOTO::::::::::::::::::ACCUSED.

J U D G M E N T.

The accused, **Nakalale Ewoton**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 27th May, 2012 at Kiwanja Ndege Manyatta Kakuma Turkana West District, unlawfully murdered Hassan Nang'olol Aleter Kodilai.

The case for the prosecution was that on the material date, **Shadrack Emaret (PW1)**, and the deceased Hassan Nang'olol Aleper Kodilai proceeded to the home of one Mohamed who owed the deceased a sum of Ksh. 4,000/= but did not have the money at the time. He told them to await the accused who was to sell goats belonging to him (Mohamed). The deceased and Shadrack (PW1) returned to the deceased's nearby home from where they spotted the accused proceeding to the home of Mohamed. They went there but the accused was not amused to see them and especially when he was told by Mohamed to give money to the deceased. The accused indicated that he had no money and offered to give a goat instead. The deceased and his colleague (PW1) indicated that they would return later for the goat. They did return and were given a female sheep by Mohamed. This angered the accused and together with his wife they followed the deceased and the accused and in the process, the accused hit the deceased on the chest with a stone. The deceased suffered injury and was later taken to hospital where he died while undergoing treatment. He was taken to the hospital by his brother **James Aleper (PW2)**, who learnt that he (deceased) had fought with the accused and was in the process injured. He (PW2) requested the accused to foot the hospital bills respecting the deceased but he declined.

He (PW2) after the death of the deceased reported the matter to the police but learnt that the deceased had already recorded a statement. He later identified the body of the deceased for post mortem purposes.

The deceased's wife, **Zeituni Ekulan (PW3)**, confirmed that the deceased was injured while being involved in a fight with the accused. She indicated that she saw the accused hit the deceased with a stone.

Dr. David Masenge Nyang'au (PW4), carried out a post mortem examination on the body of the deceased and he opined that the cause of death was pneumothorax on the right upper lobe of the lung i.e. blood on the right side of the chest. He compiled a report to that effect and produced it in evidence (P. Ex. 2).

IP Simon Kirui (PW5), of Kakuma Police station investigated this case and established that the deceased and the accused were involved in a fight which led to the deceased suffering fatal injuries. He (PW5) therefore arrested and arranged the accused in court.

The accused in his defence, denied the charge and indicated that the person Mohamed gave the deceased his (accused's) goat and pregnant sheep but later the deceased and his colleagues returned to his home and alleged that his wife had abused them earlier. A person called Losike slapped the accused's wife and he (accused) went to her rescue. It was then that he was attacked by Losike and his group. He fought back and they took off. He reported the matter to the area chief on the following morning. The chief told him that he would know what to do but after one month, he was arrested and charged even though he knew nothing about the death of the deceased.

From the foregoing evidence, it is clear to this court that the cause of the deceased's death was not disputed nor was it disputed that he was injured after being involved in a fight with the accused.

The accused confirmed that he was indeed engaged in a fight with a person called Losike and others. He clearly avoided to say that those others included the deceased as it was apparent from the evidence of Shadrack (PW1) and Zeituni (PW3) that the fight mainly involved the deceased and the accused.

The person called Mohamed was not called to testify and shed more light on the incident.

However, there was already sufficient evidence from the other witnesses especially Shadrack (PW1) and Zeituni (PW3) as well as the accused which proved that indeed the deceased was injured after fighting with the accused. The injury was a direct result of the fight which was by itself an unlawful act and since the injury later proved to be fatal, the accused could not be heard to deny responsibility for the death of the deceased as he did in his defence which clearly showed that he was evasive with a view to exculpate himself from the matter.

However, the evidence against the accused indicated that the death of the deceased was not premeditated by the accused and was most likely than not an unfortunate incident. There was no intention by the accused to kill the deceased but he must be held responsible for the consequences of his unlawful act of fighting with the deceased and occasioning him fatal injury. He (accused) acted unreasonably and irrationally by choosing to pick a fight with the deceased due to a debt owed to the deceased by a third party. The evidence by the prosecution has clearly proved the charge of manslaughter against him. Consequently, he is hereby found guilty of manslaughter contrary to section 202 of the penal code and convicted accordingly.

[Delivered and signed this 31st day of October, 2013.]

J.R. KARANJA.

JUDGE.