



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KITALE

Criminal Case 25 of 2010

REPUBLIC ::: PROSECUTOR.

VERSUS

LOGORIO EKUAM

EMOJONG NAKUA ANG'ELA ::: ACCUSED.

J U D G M E N T.

The accused, **LogorioEkuam**, and another appeared before the court on 3rd June, 2010 charged with murder contrary to section 203 read with section 204 of the penal code.

It was alleged that on the 7th May, 2010 at Namakat village Turkana South District, jointly with another not before court murdered **James EmaseEtelang**. The charge in respect of the accused's co-accused i.e. **EmojongNakuaAng'ela**, was however terminated by the prosecution on the 30th November, 2010. Thereafter, the trial proceeded against the accused only.

It was the prosecution case that on the material date at a village called Simaelele a project by the Anglican church of Kenya (ACK) to build a canal was in progress. A group of people including **JosephatEkiruEkuwam (PW5)** were working at the project site when a fight broke out between people from Simaelele village and those from a village called Namalet after the people from Namalet village prevented those from Simaelele from building the canal. In the process, gunshots rent the air.

Immediately thereafter, **Josephat (PW5)** learnt that a person had been shot dead. He (PW5) went to a nearby police post and made the necessary report.

An assistant chief, **Henry EtaboEkitera (PW6)**, learnt of the incident and convened a meeting involving village elders from both Namalet and Simaelele villages. In the dialogue that followed, the chief was informed of what had happened. He was told that the accused took a gun from his son and shot the deceased dead. Consequently, the accused was arrested and the gun was recovered and surrendered by the Ass. Chief to the police at Lokichar.

EkalaleEkitelaLotino (PW3), a brother to the deceased, was at his home on the material date when he

heard gunshots. On enquiry, he was told that a person had been shot. He proceeded to the scene and realized that it was his brother who was shot dead. He joined others in pursuing the alleged suspects who included the accused. The group found the accused at a place called Apalima but without a firearm. He (accused) was apprehended and handed over to the police at Kainuk police station.

William Rokei (PW4), a police reservist at Kalemnyorok was informed that a person had been killed at Simalele. He proceeded to the scene and found that it was the deceased who had been killed. He (PW4) noted a gunshot wound on the head of the deceased.

The reservist was told that the deceased had been killed by the accused. He (PW4) interrogated the accused who denied having killed the deceased. The accused implicated a young man called Angela but the young man denied killing the deceased and instead implicated the accused.

The reservist was also told that a fight had erupted between two groups of people and in the process the deceased was killed.

Dr. Ronald Kibet (PW1) produced a post mortem examination report prepared by his colleague, Dr. Ibrahim.

The report indicated that the deceased died from cardio respiratory arrest due to severe haemorrhage and severe head injury following gun shot wounds. **Dr. Kibet** also produced a mental assessment report showing that the accused was mentally stable.

SP Lawrence Ndirima (PW7), a firearm examiner at the C.I.D. headquarters Nairobi produced a ballistic report compiled by his colleague called **Charles Koilege** who examined a firearm make AK 47 Assault rifle S/No. 054822 and confirmed that it was a firearm within the definition of the Firearms Act.

SP Ndirima, concluded the prosecution case against the accused.

With the closure of the prosecution case, the accused was placed on his defence. His case was that he was involved in some work on the 6th May, 2010 when he heard that some people had been killed at Namalet village. On the following day, he was confronted by a group of people who took him to the police. His working tool (a machete – “panga”) was taken away. Later, he was charged with the present offence which he knew nothing about. He contended that he did not know the deceased, he did not kill the deceased and neither did he know how the deceased died.

From all the foregoing evidence, it is apparent that the deceased was killed as a result of a gun shot wound to his head. The cause of death is not disputed.

The accused’s defence is that he did not kill the deceased. He therefore implied that he did not fire the fatal gun shot neither was he found in possession of the murder weapon i.e. a firearm make AK 47 rifle.

The obligation to prove the alleged guilt of the accused lay with the prosecution. The prosecution was thus required to prove beyond reasonable doubt that the deceased was shot and killed by the accused to the exclusion of any other person.

Unfortunately, the evidence by the prosecution witnesses and in particular **Josephat (PW5)**, **Henry (PW6)**, **Lotino(PW3)** and **Rokei (PW4)** was based on hearsay. None of them saw the accused in the act of snatching a firearm from somebody else and shooting the deceased.

There was no evidence of the recovery of the firearm from the accused. He said that what was recovered from him was his working tool i.e. a machete or panga.

Regretfully, the prosecution did not even call the investigating officer to testify on how the accused was arrested and on what grounds. Indeed there was no evidence to show that the offence was investigated at all. So, there was no proper explanation and evidence to justify the charge against the accused.

The failure to call the investigating officer was fatal to the prosecution case which was thus rendered unproved against the accused. In the end result, the accused is found not guilty as charged and is hereby acquitted accordingly.

[Delivered and signed this 14th day of June, 2012.]

**J.R. KARANJA.
JUDGE.**