



REPUBLIC OF KENYA  
IN THE HIGH COURT  
AT KITALE  
Criminal Case 28 of 2009

REPUBLIC ::: PROSECUTOR.

VERSUS

EMEKWI ALEERO ::: ACCUSED.

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

The accused is charged with murder contrary to section 203 read with section 204 of the penal code.

The particulars are that on the night of 22<sup>nd</sup> and 23<sup>rd</sup> June, 2009 at Naperkopoh village Turkana Central district murdered EkalEchua.

The case for the prosecution was that on the 23<sup>rd</sup> September, 2009, Ass. Chief **Daniel EmuronNamojong (PW1)** received a report from a village elder and proceeded to the scene where there was a dead body. He found the body to be that of the deceased EkalEchwa.

The Ass.Chief found villagers at the scene and noted that the body of the deceased had wounds and was lying in a bush. Villagers followed some footsteps and later returned to the scene with the accused, EmekwiAleero, who was suspected of having murdered the deceased.

A villager, **Joseph Ewoi (PW2)**, was among those at the scene. He noted that the body of the deceased had injuries on the head. He reported the matter to the police after being directed to do so by the Assistant chief.

**P.C. Mriko Morris Kimingu (PW3)** of Kalokol police base received the necessary report and proceeded to the scene. He found the body of the deceased fifty (50) metres away from the homestead of the accused. He noted that the body had head injuries and that a fishing net lay beside it. A jacket worn by the deceased was found thirty (30) metres from the scene.

P.C. Mriko and others followed footsteps found at the scene. These showed that the footsteps were of a

person wearing “Akala” (tyre) shoes which were later substituted for slippers. The Akala shoes were found in an empty house. They (shoes) had blood stains. The house was said to be the accused’s house.

After being apprehended, the accused was taken to the police station. Thereafter, he led P.C. Mriko to his house where a blood stained knife with its blood stained sheath were recovered. A blood stained boxer shorts worn by the accused was also recovered. All the blood stained items were forwarded to the Government chemists by PC Mriko (PW3) through a colleague. The wife to the deceased, **Aleman Lotieng (PW4)**, proceeded to the scene after receiving a report that her husband had been killed. She noted that his dead body had injuries on the face, back and hands.

A fisherman, **Philip Ekai Erika (PW5)**, was among those who proceeded to the scene. He noted that the blood stained body of the deceased lay down with fishing nets besides it. He (PW5) was among those who followed footsteps which led them to the house of the accused where blood stained “Akala” shoes were found.

**Dr. Donald Mogoi (PW6)**, produced a post mortem report compiled by his colleague Dr. Gilchrist Lokoel which showed that the death of the deceased was caused by cardiopulmonary arrest secondary to severe hemorrhage and brain injury.

Dr. Mogoi culminated the prosecution case against the accused. In his defence, the accused denied the offence. His case was that he was at a place called Moite on the material date. He received a call from his sister at Kalokol that she had been chased from school. He took a boat to Kalokol but due to strong waves he arrived at a place called Joab on the following day at 8.00 a.m. He hired a handcart to transport his fish to a nearby fish market. While there he was arrested and taken to Kalokol police station on allegation that he had killed the deceased.

From all the foregoing evidence, there is no dispute that the deceased was murdered. The nature of the injuries on his body clearly suggested that the assailant acted with malice aforethought and ended the life of the deceased on this earth.

The accused’s defence is a denial of the offence and a suggestion that he was arrested and implicated without cause. It was thus upon the prosecution to prove beyond reasonable doubt that it was him (the accused) who murdered the deceased.

None of the prosecution witness testified to having seen the accused committing the offence. There was no direct evidence against him. The prosecution sought to rely on circumstantial or indirect evidence to establish the accused’s culpability.

In that regard, it was stated by **P.C. Mriko (PW3)** and the fisherman (PW5) that footsteps from the scene where the body of the deceased was found led them into a house said to belong to the accused where blood stained “Akala” shoes were immediately found.

There was nobody inside the house at the time the Akala shoes were found. It was suspected that the shoes belonged to the accused who on being arrested allegedly took P.C. Mriko to the house where a blood stained knife together with its sheath was found.

**P.C. Mriko** said that the accused instructed his younger wife to remove the blood stained knife from the blood stained sheath.

The said wife did not testify in court to confirm the fact.

**P.C. Mriko** also said that the blood stained items were forwarded to the Government Chemist for analysis and that a report of the findings was compiled.

The report was however not produced in evidence. This also applied to all the other items and in particular those which were blood stained.

It was not therefore established by the prosecution that the blood stains on the Akalashoes , the knife and the sheath linked the accused to the unlawful killing of the deceased.

In failing to establish a link between the accused and the blood stained items in relation to the death of the deceased, it may safely be stated that the attempt by the prosecution to rely on circumstantial evidence was futile.

The failure by the prosecution to provide forensic evidence linking the accused to the offence was fatal to its case.

As the position stands, there is neither direct nor indirect evidence against the accused. It cannot therefore be said that the prosecution case has been proved beyond reasonable doubt.

Consequently, the accused is found not guilty as charged and is acquitted accordingly.

**[Delivered and signed this 14<sup>th</sup> day of June, 2012.]**

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