



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE 38 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

LETEIYON LETORE.....ACCUSED

JUDGMENT

By an information dated 28/4/2010, Leteyion Letore was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on 24/7/2008, at Arsim Location, Samburu District, unlawfully killed Lkemperian Lempei. The accused denied the offence. In support of its case, the prosecution called a total of six witnesses. The accused person gave unsworn statement in his defence.

Lkipanti Lempei (PW1) told the court that the deceased was his brother while the accused is his nephew. The accused is a son to his sister. He recalled that on 24/7/2010, when he was coming from work in a different location, he was stopped by Geoffrey Lempei, who informed him that the accused and deceased had fought and one had died. He proceeded home and found the deceased's body near his gate. He saw that the deceased had received injuries on the left side of the stomach, and the intestines were exposed. Police arrived, they took the body to the mortuary where post mortem was done by Dr. Misoi, after PW1 identified the body. PW1 was not aware of any disagreement between the deceased and the accused before the incident.

PW2, Daniel Lesilele, a Nursing Officer at Baragoi District Hospital, was walking to his place of work on 24/7/2011 at about 6.30 p.m. He passed via the centre. He saw two people fighting about 20 metres away. He stopped to see and noted that one was armed with a sword while the other had a club. He said the accused was one of the two fighting. Both the accused and the deceased were familiar to him as PW2 had lived in the area for a year and used to see them. PW2 turned and went back where he had come from. The first person he met was Peter Lesanjire whom he told what he had seen and that one person was injured and asked him to go and assist as he had a vehicle.

J L, a child who did not know her age, after a voire dire examination by the court, was found to be intelligent and understood the meaning of an oath, gave evidence on oath. She recalled that on 24/7/08, she saw Letio and another person she knew by appearance fighting. It is the accused whom she knew by appearance. She said that the accused was armed with a sword; that the deceased asked the accused why he killed his dog and the accused said that it was intentional and he stabbed the deceased on the stomach. The deceased tried to walk to PW3's home while holding his stomach but he fell near the gate. She said that the incident occurred about sunset but there was still light. PW3 said that the deceased was a brother to her father, therefore her uncle.

PW4, Jonas Lempei, is the son of the deceased. He said that accused's mother and his father are brother

and sister, therefore the accused is his cousin. PW4 recalled that on 24/7/08, he was playing foot ball when he heard screams and ran to where the screams emanated. He found the deceased had died and he had been injured so that his intestines exposed. He reported to the Chief then to Barogoi Police Station. The body was collected and taken to Maralal mortuary. He said that the accused disappeared for about a year. PW4 told the court that it is J who informed him that the accused and deceased quarreled over the deceased's dog which accused had killed.

PC Raphael Lolit (PW5) of Barogoi Police Station said that the Chief of Arsim went to the station at midnight and reported that the deceased had been murdered by his nephew. They went to the scene next day where they found the deceased had been totally injured on the stomach and his intestines exposed. They collected the body to the mortuary and later the body was handed over to the family for burial after post mortem was done. He said that the accused disappeared till he was arrested in Nakuru about a year later.

The post mortem was carried out by Dr. Misoi but the report was produced in court by Dr. Bosire (PW6). Upon examination, the deceased was found to have a stab wound, 16 cm wide on the right side of the abdomen which extended on the other side, that the small intestines had multiple penetrating cut wounds. He opined that the cause of death was cardiopulmonary arrest due to severe haemorrhage.

PC Jude Owour (PW7) recalled that on 22/7/2009, he was at the police station when he was asked to go to Nakuru to collect the accused who had been arrested and he did so. He did not know how the accused person was arrested.

When called upon to enter his defence, the accused said that he left Arsim on 20/7/2008 and came to Nakuru. On 14/7/2010, he went to his work place and he was arrested and charged for an offence he did not know.

After hearing the evidence of PW2 and PW3, this court is satisfied that the accused was identified as the person who was involved in a quarrel with the deceased on 24/7/2008. Both witnesses told the court that the incident occurred about 6.30 p.m.; that there was still daylight and they were able to see well. PW3 is a child who gave evidence on oath after the court conducted a '*voire dire*' examination and was satisfied that she understood the meaning of oath and was intelligent enough. Her intelligence could be gleaned from the manner in which she testified, she knew the deceased who was uncle. She knew the accused by appearance. Incidentally, from the evidence of PW1 and PW4, the accused must be PW3's cousin. The accused and the deceased are people she knew well. PW2 knew both the accused and deceased by appearance and he said he even told Peter whom he met as he left the scene to go and assist. I am satisfied that the accused person was properly identified as the person who quarreled with and fatally injured the deceased. PW3 was close enough to the accused and deceased and heard what the cause of disagreement was. The deceased blamed the accused for killing his dog but the accused admitted it but was not remorseful and instead struck him with the sword.

The post mortem revealed that the deceased suffered a stab wound, 16cm wide from one side of the abdomen to the other side. Part of the abdominal gut and small intestines were exposed (PEX.1). PW1, PW3 and PW4 who saw the deceased after he was murdered did see the extensive wound and exposed intestines. This evidence is consistent with the findings of the Doctor who performed the post mortem. The injuries must have been inflicted by the sword which PW2 and PW3 saw with the accused.

The accused's defence is a mere denial of the charge. PW2 and P3's evidence were not controverted in any way. PW1, Pw4 and PW5 all said that the accused disappeared from home till his arrest in Nakuru in 2010. It is PW7 who collected him from Nakuru on 23/4/2010, about 2 years after the murder. PW1 and PW4 did not know of any disagreement between the accused and the deceased. There is no known reason why PW2 and PW3 could frame the accused. The accused's conduct is telling. He escaped from home after the murder of the deceased. His defence is a mere sham and it is hereby dismissed as untrue.

Did the accused have malice aforethought?

According to PW3 the deceased and the accused disagreed over an allegation that the accused had killed the deceased's dog. When asked why, the accused agreed to having killed the dog but was not remorseful. In addition, the injury inflicted on the deceased, that is extensive stab wound across the stomach can only have been meant to do grievous harm or end the deceased's life which it did. The accused's conduct and injuries inflicted go to prove the necessary malice aforethought for an offence of murder to be proved.

In the end, I am satisfied beyond any reasonable doubt that it is the accused who murdered the deceased. I find him guilty and convict him of the offence of murder as charged.

DATED and DELIVERED this 20th day of July, 2012.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Ombati for the accused

Mr. Omari for the State

Kennedy – Court Clerk