



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 126 of 2009

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL KIPKEMOI RONO.....ACCUSED

JUDGMENT

The accused Samuel Kipkemoi Rono is charged that on 9th day of November, 2008 at Siera Leone Village in Narok District, he murdered Elvin Ngetich (the deceased) contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

The prosecution witnesses testified to the effect that P.W.1 Joyce Ngetich, (Joyce), was at her house with the deceased when she heard a person whose voice she recognised as that of the accused saying “*open the door*” in Kipsigis language. According to Joyce, the accused was with his wife. As the deceased wanted to go out, Joyce told him not to open the door. Shortly, thereafter, the deceased was shot with an arrow through an opening in the window. Immediately before the deceased was shot, Joyce heard the accused person’s wife scream. According to Joyce, she knew both the accused and his wife before the incident and therefore she was able to recognise their voices. P.W.2, Joseph Kibiri and P.W.3 Phillip Mutahi were both informed by the deceased and Joyce that the former had been shot with an arrow by the accused. The deceased had an arrow head stuck on the throat. They took him to the hospital. The witnesses were unanimous that there was no disagreement between the accused and the deceased.

P.W.5, Chief Inspector Wilfred Kariuki Mwangi, investigated the case and subsequently charged the accused with the present offence. P.W.6, Dr. Shadrack Kiona Tanui produced the post mortem report on behalf of Dr. Cheruiyot. According to the report, the deceased had a stab wound penetrating his trachea. From the injury, the doctor concluded that his death was caused by cardiopulmonary arrest due to acute respiratory failure.

In his defence the accused denied causing the deceased person's death. He stated that he knew the deceased and that they used to meet at drinking places; that they had no differences; that he did not know the home or the wife of the deceased; and that the deceased's wife cheated the court that she heard his voice.

I have considered the evidence by both the prosecution and the accused person.

From the medical evidence, it is not in doubt that the deceased died as a result of injuries caused by an arrow shot through the throat.

There was no eyewitness to the offence but both the deceased and his wife allegedly recognised the voices of the accused and that of his wife shortly before the deceased was shot.

In **Mbelle V Republic**(1984) KLR 626 the court of Appeal that held-

“In dealing with evidence of identification by voice, the court should ensure that:

- (a) the voice was that of the accused;**
- (b) the witness was familiar with the voice and recognized it;**
- (c) the conditions obtaining at the time it was made were such that there was no mistake in testifying to what was said and who had said it”**

In this case, Joyce alleges that she recognised both the accused and his wife from their voices and that she heard the accused say in Kipsigis language “*open the door*” but she could not remember what the accused's wife said, apart from screaming.

Before this incident, Joyce had only known both the accused and his wife for 2 months. She used to meet the accused on the road but nothing much transpired between them and the only conversation between them was limited to greeting- “*jambo, jambo.*” As regards the accused's wife, though she used to meet her at the river, nothing was uttered by her, on the material day, that could have been used to identify her voice. It must also be borne in mind that the incident took place at night with arrow being shot from outside through an opening in the window.

From the totality of the evidence presented before me, I find as a fact that although the deceased and the accused were neighbours, there was no known

grudge between them before the incident. I also find that Joyce was not properly acquainted with the voice of the accused and that the words “*open the door*” in Kipsigis language was not enough to say with certainty that they were uttered by the accused. After all, they had never had a conversation beyond “*jambo, jambo.*” The circumstances are such that it cannot be said that Joyce was not mistaken as to identity of the attacker.

For the above reasons, I am of the considered view that the evidence presented by the prosecution is insufficient to prove beyond reasonable doubt that the accused was the one who shot the arrow that caused the death of the deceased. Consequently, I acquit the accused under **Section 215** of the **Criminal Procedure Code**.

Dated, Signed and Delivered at Nakuru this 24th day of September, 2012.

**W. OUKO
JUDGE**