REPUBLIC OF KENYA

High Court at Kitale

Criminal Case 5 of 2006

REPUBLIC.....PROSECUTOR.

VERSUS

LAWRENCE WAFULA WANJALA.....ACCUSED.

J U D G M E N T.

The accused, **Lawrence Wanjala,** is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 1st November, 2005 at Soweto Village, Moi's Bridge Trans Nzoia District, murdered police constable Wilson Maiyo.

The case for the prosecution was that at the material time, the accused was a resident of Milimani sub-location situated between the border of Trans Nzoia and Lugari Districts. He was a matatu tout at Moi's Bridge known to the area chief, **Moses Okumu Semichangi (PW1)**. On 31st October, 2005, the said chief received a tip off that three people had been seen carrying things between 3.00 p.m. And 4.00 p.m. On a daily basis. The chief confirmed the information and reported to his superior colleague who referred him to the police at Matunda police station. He reported to the police that the accused and two others had been spotted carrying what appeared as a firearm. A team of about eight (8) police officers were directed to accompany him (PW1) to the house where the accused lived. They went there at about 5.00 a.m. On the material 1st November, 2005.

The police officers included the deceased, **P.C. Abraham Mbatha (PW2), PC Philip Chebet (PW3), IP Felix Ouno (PW4), P.C. Pasiciano Ouna (PW5)**and **PC Luke Marua (PW8).** They were all armed and had been informed that thugs were hiding in the house. They surrounded the house and laid ambush. The deceased ordered the occupants of the house to open the door and surrender. Immediately thereafter gunshots rent the air. The deceased screamed that he had been shot. An exchange of fire followed. Three occupants of the house came out and disappeared in a maize plantation near River Nzoia. Later, gunshots and shouts emanated from the other side of the river. The police officers rushed there only to find that a mob of people had lynched a suspect in possession of an AK 47 rifle. The police took possession of the rifle and removed the body of the suspect to the mortuary. Nobody was arrested at the scene of the offence but on the 3rd November, 2005, the deceased died while undergoing treatment at Kitale District Hospital.

The accused was said to have been at the scene at the material time. He allegedly informed the police that the home belonged to his uncle. He was later arrested and charged with the present offence.

Retired Inspector of Police, **David Kiprotich Kitur (PW6),** received the accused and the recovered rifle. He thereafter instructed one P.C. Nyota to continue with other formalities.

SP Lawrence Ndiwa (PW7), attached to the C.I.D. Headquarters Nairobi as a Firearms examiner, examined the recovered firearms and confirmed that it was a firearm falling within the ambit of the Firearms Act.

Dr. Joseph Embenzi (PW9), produced the postmortem report showing that the deceased died from gunshot wounds on the abdomen.

In his defence, the accused denied the offence and stated that he was on duty as a matatu crew on the 30th and 31st October, 2005. he slept in Kisumu on 31st October, 2005 and returned to Moi's Bridge on the following day through Eldoret. On the 2nd November, 2005, he was at his father's farm when a casual worker informed him that something had happened at Soweto village. He went there and found a crowd of people at his grandmother's homestead. The crowd pointed him out as the owner of the homestead. He was arrested and handed over to the police at Kitale on allegation of having been found in possession of firearms used to kill a police officer. He denied the allegation.

From the foregoing defence, it is apparent that the murder of the deceased while in the course of his lawful employment as a police officer is not disputed. it is also not disputed that the offence occurred at a homestead associated with the accused's relatives i.e. either an uncle and/or grandmother.

IP Ouno (PW4) indicated that the accused was in a room in the material homestead and that he said that the homestead belonged to his uncle. The accused indicated in his defence that the homestead belonged to his grandmother. Whatever the case, the deceased was shot in that homestead and later died while undergoing treatment.

The accused denied having been involved in the shotting of the deceased. He indicated that he was not at the scene at the material time. Indeed, there was no evidence from the prosecution that he was among the three occupants of the material house who escaped into a maize plantation during the shooting incident.

None of the police officers identified the three occupants of the house as they fled from the scene. A person found nearby by villagers while in possession of an AK Rifle was suspected to have been part of the fleeing offenders. He was lynched by the villages and his body removed to the mortuary by the police. Even the chief (PW1) who was in the company of the police officers at the material time did not identify any of the fleeing offenders. He only suspected that the accused could have been inside that house at that time. However, the evidence by IP Ouno (PW4) suggested that the accused was at a different house if at all he was at the material homestead at the material time.

Be that as it may, no suspect was arrested at the scene despite the ambush laid by the police. The three suspects managed to escape yet the police had surrounded the house. Two of the suspects made successful escapes while one was caught and lynched by members of the public. None of the three suspects was identified as the accused.

Indeed, there was no scintilla of credible evidence to link the accused with the fatal shooting of the deceased police officer. His arrest and arrangement in court was clearly based on mere suspicions and probably of his keeping bad company.

Consequently, this court must hold that the prosecution has failed to prove its case against the accused beyond reasonable doubt.

The accused is therefore found not guilty as charged and is accordingly acquitted.

[Delivered and signed this 18th day of December, 2012.]

J.R. KARANJA.

JUDGE.