



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 69 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL ROTICH.....ACCUSED

RULING

This is one of those cases when Kenyans temporarily lose their faculties and become victims of mass hysteria, hacking themselves to death for reasons which the investigators of crimes seem to be defeated to delve into.

The accused, is charged with two counts of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, (*Chapter 63, Laws of Kenya*).

The particulars are that on the 19th day of May 2008 within Tendwet Area in Narok District within Rift Valley Province, jointly with others not before the court murdered Topoika Ole Tikani and on Count 2, murdered Longisa Ole Sadera.

The prosecution called five witnesses. PW1 was the brother of one of the deceased, Topoika Ole Tikani. He merely identified his brother's body for purposes of the post-mortem at Narok District Hospital Mortuary. He noticed that the deceased had been cut in several places, the head had six cuts, he had spear marks on the back, the right hand, and right leg had been cut.

It is PW2 who described how the deceased met their deaths. He was the driver of the ill-fated vehicle, a Toyota Saloon car, and was travelling from Mulot towards Narok. He had altogether seven passengers. Upon reaching a market centre known as Siera Leone, four of his passengers, alighted. Three passengers remained and wanted to be taken to a place called Chapakandi, an area PW2 said he did not

know.

Out of the blue, a crowd of over one thousand people, in his estimation, and started assaulting one of the passengers by cutting him, and he too was hit at the back by one of the mob. At that stage the owner of the motor vehicle took control of the motor vehicle, and rushed him to hospital at Longisa.

It was PW2's testimony that before he was rushed to hospital that one of the suspects ran away but two other passengers were cut with double edged knives. One of the passenger was cut on the back and he ran into the bush with crown behind him. One of his passengers was cut on the right side of the head, and he too ran into the bush with the crowd in hot pursuit. There was a large crowd of people. PW2 testified later that the victims of the attack were Police Officers. He reported the matter to Mulot Police Station, in the company of one Ibrahim Towet, the owner of the vehicle. He himself suffered injuries on the left shoulder and chest.

His final piece of evidence in chief was - "I do not have memory of the attackers. I cannot remember even the fellow in court."

He reiterated this statement in cross-examination by Mrs Mboga - "***when we reached Sierra Leone we were attacked. The crowd was large, I could not identify any one.***", and though they reported the incident, he was not aware that any one had even been arrested - "***I cannot remember seeing the accused.***"

PW3 was Dr. Esther Chula attached to Narok District Hospital and conducted the post-mortem. PW3 also produced the post-mortem report on Longisa Ole Sadera - which was done by her colleague Dr. Abakalwa who had since been transferred to Baringo District Hospital, and could not be procured to testify without undue delay and extra expense. PW3 described gruesome injuries suffered by both deceased in the hands of the mob.

PW4 was APC Eliud Tania from Olulunga DC's Office. His testimony was that a crowd of people came to Tendwet Chief's Camp to which he was attached and informed them that one of the person's they knew was involved in the killings was in their area. He accompanied them and had the accused arrested. The information was released from Ag. Chief Ann Kerorei. PW4 testified that he saved the accused from being lynched by the mob.

PW5 was the investigating officer. He recorded the statements of the Abraham Towet and Vincent Kirimi (PW2). It is Abraham Towet who informed him that his passengers who were attacked were on their way to track their donkeys stolen from an area called "Ngombet". He corroborated the evidence of PW2 that on reaching Tendwet (Sierra Leone) the road was blocked by a large crowd of people and upon realizing that the two passengers were Police Officers, they pulled them out attacked and hacked them to death.

PW5 confirmed that no identification parade was carried.

With that evidence, the prosecution abruptly closed its case.

I have reviewed the above evidence. What comes out clearly that a very large crowd of people residents of Sierra Leone and its environs were extremely upset about something. The evidence did not say, why

they were upset. For whatever reason, they had no reason to attack and kill innocent passengers travelling on a public highway. However they did. Another crowd, led by Ag. Chief Anne Kerorei thought they had found one of the culprits, the accused. They informed the Administration Police, who informed the other civilian Police, the C.I.D. who dispatched PW5 to investigate. He appears to have limited his investigations to the driver and the owner of the vehicle from which the deceased were picked out and hacked to death.

The Investigating Officer did not record statements from either the Ag. Chief or members of her entourage who suspected the accused to be one of those who took part in the killing of the two deceased. If he did, and he may have done so, there was no evidence to link him directly or indirectly or even circumstantially, with infliction of the injuries upon the deceased and from which they succumbed to what must have been extremely painful death. It is thus difficult to put the accused to his defence.

Section 306(1) of the Criminal Procedure Code (Cap. 75, Laws of Kenya), provides that when the evidence of the witnesses of the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one several accused committed the offence, shall, after hearing, if necessary, any argument which the Advocate for the prosecution or the defence may desire to submit record a finding of not guilty.

In this case, as I have already stated above, there is no evidence, direct or indirect, circumstantial or otherwise linking the accused to the killing of the two deceased. It is suspicion, mere suspicion is not enough foundation to put the accused to his defence or find him guilty later.

In the circumstances I must make a finding of not guilty and acquit the accused accordingly.

Even though the accused is acquitted of these charges, I must warn the accused to keep the peace for the next twelve months and report his whereabouts to the area chief on a Monday twice every month.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 25th day of February 2011

M. J. ANYARA EMUKULE

JUDGE