



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

HIGH COURT MURDER CASE NO.7 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

ABISANSIO OKADIKOR.....ACCUSED

J U D G E M E N T

The accused, Abisansio Okadikor stood trial of the murder of one Tom Opili Ekea on 25th January, 2009 at Olepito, Ochude location in Teso County. Six witnesses in all testified against him.

A summary of the prosecution facts were as follows. That in the night before 25th January 2009, the accused person above mentioned lost his pig. He appears to have spread the information about the theft of the pig. Apparently the deceased Tom Opili Ekea was seen with the pig next morning of 25th January, 2009. He was arrested with the pig by unidentified members of the public who unfortunately beat the deceased at random to death.

Evidence on record shows that he was seriously beaten as well as cut with sharp objects such as pangas or swords.

It was the evidence of PW2, Ali Mokabin Ekuo, a member of the public from the village where the deceased was lynched, that he is the brother of the deceased Tom Opili Ekea. He testified that on 25.1.2009 he returned home from a market where he was butcher and found a big mob of people near his home. The mob had seriously beaten the deceased. The witness looked at the deceased and saw that the deceased was in a critical condition. He talked to him but the deceased was unable to reply because of his critical condition. He decided immediately to report to the administrative authorities.

He left the scene and cycled to the place of the Assistant Chief of the area. He found Assistant Chief Santrino Madola Ekisa, PW1 and carried him back on his bicycle to the place where the deceased lay. It is at this stage that PW2's evidence became critical. He stated thus-

“We went with the Chief to the scene. The Chief (PWI) called the police. As we were waiting for police, the accused came to the scene armed with a panga. He held the deceased on the chin and lifted it. He then cut the deceased with the panga on the neck in a way that he was slaughtering

him. I stood about (4) metres away.

The accused then licked the blood on the panga with his tongue and left the scene”.

The above quoted evidence is the only direct evidence that was given in this case against any member of the public who may have taken part in the lynching of the deceased. PW2 added that until then the deceased was still alive thus implying that the accused's act, killed the deceased. He also implied that the Assistant Chief who he had brought to the scene on his bicycle, was present.

The doctor who performed the postmortem was Doctor James Kisilu who gave evidence as PW5. He found a cut wound on the anterior neck, severing the major blood vessels thereof. He also found bruises and lacerations on the shoulders, elbows, and other parts of the deceased's body, with the left ear partly severed. He concluded that the cause of death was a cardiopulmonary arrest following a hemorrhage from trauma by a sharp object to the neck.

The accused person gave an unsworn statement in his defence. He said that he lost his pig in the evening or night before 25th January, 2009. Having reported the theft to the Assistant Chief, PW1, he told other villagers of the incident. The next morning he went looking for it from place to place without success. That at about 9a.m. he returned to the village, only to hear villagers making noise. When he went to the scene he found the deceased had been beaten by members of the public. He then went to his home. Soon after the Assistant Chief collected him from the house to the spot where the deceased lay. When the police came, they carried away the body of the deceased as well as took the body to mortuary and then to Adungosi police station. He was later charged with this offence.

I have carefully perused and considered the evidence both as recorded by the former presiding Judge and by this court. There is no doubt that the deceased was beaten by the members of the public who apparently found him in possession of the accused's lost or stolen pig. There is no doubt as well that any person who took part in the beating had no lawful reason to do so and if the beatings caused injuries upon the deceased that led to his death, any one person who participated would be responsible for the deceased's death.

In this case the question is whether or not the accused took part in inflicting the injuries that contributed to the deceased death.

The critical evidence came from PW2 as earlier hereinabove quoted. The witness said that he saw the deceased after he was beaten. He was lying down unable to speak. He went and collected PW1, an Assistant Chief to the scene of crime thus placing a member of the administration in the scene. If at that point PW2 saw the accused person use a panga to slash the deceased's neck as he claimed in his evidence, there is no reason why the Assistant Chief would miss to witness and testify on this critical part of the evidence. There is no evidence that the Assistant Chief moved away from the scene of crime after just arriving to witness what had happened. Even if the Assistant Chief would have moved elsewhere when the critical act of slashing the neck of the deceased was done, one would expect that PW2 who witnessed it happen, would draw his attention to it immediately.

However, the Assistant Chief gave evidence. He said nothing about the accused cutting the deceased with a panga in his presence, or after PW2 brought him to the scene of crime. In my humble view, PW2 Ali Mokabin Ekuo is not telling the truth when he claims that he saw the accused cut the deceased's neck after he and the Assistant Chief had arrived at the scene together. If on the other hand, he had witnessed the act before he went to call the Assistant Chief, then it is difficult to understand why he did not say so.

In the above circumstances the evidence of PW2 is very suspect. He is the brother of the deceased and may have temptation to tell a lie. Since however it is his evidence alone that linked the deceased's death to the accused, and since his evidence has been discredited, little else remains in terms of evidence to convict the accused. What remains are mere suspicions that since the deceased stole the accused's pig, the accused had motive to take part in beating him.

In the above circumstances, the accused person herein must and is hereby acquitted. He shall be discharged from prison, unless otherwise therein lawful held.

Orders accordingly.

Dated and delivered at Busia this 3rd day of February 2011.

D.A. ONYANCHA

J U D G E