



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**CRIMINAL CASE NO. 62 OF 2004**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BENJAMIN SITOT LOMKERENG.....ACCUSED**

**J U D G M E N T.**

1. The accused person **Benjamin Sitot Lomkereng** is charged with the offence of murder contrary to the provisions of section 203 of the Penal Code. The particulars of the charge states that on 15<sup>th</sup> December, 2004 at Sostin village in West Pokot District within the Rift Valley province he murdered **Maria Tuliaren**. The prosecution called a total of 7 witnesses who gave evidence in support of the charge. After the close of the prosecution's case, the accused person was put on his defence; he gave unsworn statement of defence and did not call any witness.

2. The prosecution relied on the evidence by **Kama Psinen, PW1**, the mother of the deceased and mother in law of the accused person. PW1 testified that on 14<sup>th</sup> December, 2004 the accused person who was at the material time married to the deceased had paid her a visit during the day, PW1 served the accused person with food and after the accused person ate the food he left without saying anything. At that time, the deceased was married to the accused person but they had separated and the deceased had returned to her parent's home due to disagreements with the accused person.

3. The following day that is on the 15<sup>th</sup> December 2011, at about 8.00 a.m. PW1 with her daughter **Cherop Tuliaren, PW2**, the deceased and **Kama Chepengat Lemko PW3** the three of them were walking to a market place called Ortum Centre. Along the way, PW1 heard someone screaming. When she looked behind she saw the deceased screaming, the deceased had been shot with an arrow in the stomach. PW1 said she took a step backwards and tried to remove the arrow from the deceased's stomach without success. Immediately, the accused person emerged from the nearby bushes and started cutting the deceased with a panga. PW1 and PW2 ran to a place called **Marich** to look for help. The arrow that was lodged in the deceased stomach was recovered from the deceased's body was produced in evidence. The evidence of PW2 is essentially similar to that of PW1 as they were all walking together in a tow when the accused person attacked the deceased. The three witnesses saw the accused person attack the deceased

with a panga after shooting her with an arrow.

4. PW3 also testified that she was walking with PW1 and PW2 when she heard the deceased scream after she was shot with an arrow. The deceased tried to run away but she fell down. PW3 saw the accused person brandishing a panga. She dropped a bag of maize that she was carrying and ran backwards and called people from a nearby homestead but by the time they arrived to rescue the deceased, she had already passed away. The body of the deceased was examined by **Dr. Juma Kibe**, although the report was produced in court by **Dr. John Kipkosgei Chirchir, PW7** because the doctor who had prepared the post mortem report was not available.

5. According to the post mortem report the deceased's body had a deep cut on the neck cutting through all the major vessels of the neck and trachea. There was another cut on the right temporal region exposing the brain matter. Another cut wound on the abdomen which was like a hole. According to the report the doctor who performed the post mortem examination, he formed the opinion that the cause of death was due to multiple injuries of the vital organs due to assault. The injuries were caused by a sharp object and the injury on the stomach was probably caused by an arrow. The same doctor also examined the accused person to ascertain his age and mental status of the accused person, he was found fit to stand trial for murder.

6. The other evidence was by **P.C. Paul Korir**, PW6, and the investigating officer who took over this matter from his colleague who died before completing the investigations. The file was given to PW6 by Corporal Barnabas Ngeno who had been transferred to North Eastern. PW6 kept the arrow which was recovered from the deceased's body and he produced it in court as an exhibit. The body of the deceased was identified by **Tuliareg Lokondo**, PW4 and **Tuluku Lokondo, PW5** the father and the uncle of the deceased respectively for post mortem examination..

7. The accused person was put on his defence. He gave unsworn statement of defence and denied he had anything to do with the death of deceased who was his wife. He told the court that he had given his wife permission to visit her parents and return after Christmas. He was arrested by the police on 14<sup>th</sup> December, 2004 for no specified reasons, but when he reached the police station, he was charged with the offence of murder which he denied.

8. **Mr. Tigogo**, learned counsel for the accused person submitted that the prosecution did not prove the case against the accused person to the required standard. He submitted that there are gaps and inconsistencies borne by the evidence of PW1, PW2 and PW3. He claimed that after the deceased was attacked and she screamed, the three eye witnesses scampered for safety and they did not identify the accused person. Moreover, the arrow that was removed from the deceased's body was not blood-stained thus the accused person was merely suspected and victimized for the death of his wife.

9. On the part of the prosecution, **Mr. Onderi** learned Senior Principal State Counsel submitted that the prosecution proved its case to the required standard. He submitted that there was overwhelming evidence by PW1, PW2 and PW3 who saw the accused person shoot the deceased with an arrow and descended on the deceased who had fallen on the ground and was helpless and cut her viciously with a panga. PW3 also testified that she saw the accused person shoot the deceased with an arrow but scampered for help and the fact that she did not see the accused person when he continued to cut the deceased with a panga is not a material inconsistency. As regards the motive, the accused person had matrimonial disagreement with the deceased who had separated and had gone back to her parents.

**10. Mr. Onderi** further urged the court to find that the accused person had malice aforethought against the deceased who was his wife, but had separated from him at the time and that is why the accused person used a lethal weapon to shoot the deceased and when she fell down he cut her with a panga inflicting fatal injuries. According to **Mr. Onderi** the way the accused person viciously attacked the deceased without any provocation is clear evidence that he planned to kill the deceased and he actually killed her, thus the offence of murder was proved. The accused person was positively identified by three eye witnesses and the time the offence took place was in the morning.

**11.** The above is the brief summary of the evidence of this case which was tried with the aid of assessors. The matter was summed up to the three assessors and all the three returned a unanimous verdict of guilty as charged. Going by the evidence on record, it is clear that the accused person was identified by PW1, PW2 and PW3 who were walking with the deceased when she was viciously attacked by the accused person. The deceased was attacked in broad day light thus there can be no doubt regarding the identification of the accused person. The accused person was also well known to the three witnesses, as the husband of the deceased, the murder weapon was also produced as exhibit.

**10.** I have evaluated the defence by the accused person alongside the evidence by the prosecution and in my assessment; the defence is a mere denial, which lacks credibility, in any case the accused person had no obligation to give any defence but he opted to give unsworn statement. The deceased had run away from the matrimonial home where they were living with the accused person. The accused person stabbed the deceased for no apparent reason and the deceased sustained serious injuries and succumbed to death as a result of those injuries as confirmed by the post mortem report which was produced in evidence.

**11.** I am satisfied that the prosecution proved this case to the required standard that it is the accused person and non other caused the death of **MARIAN TULIAREN**, the deceased herein. When the accused person stabbed the deceased, he must know the consequences of his own actions. I accordingly agree with the verdict of the assessors that the accused person is guilty of the charge of murder contrary to the provisions of section 203 of the Penal Code. The accused person is hereby convicted of the charge of murder.

**Judgment read and signed this 6<sup>th</sup> day of May, 2011.**

**M. K. KOOME.**

**JUDGE.**