



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Case 98 of 2008

REPUBLIC.....PROSECUTOR

VERSUS

YAKUB KANYORA KAROBU..... ACCUSED

RULING

The accused, AHMED IBRAHIM ABDULLAHI, was charged with the offence of murder, contrary to section 203 as read with section 204 of the Penal Code. It is the prosecution case that on 4th October 2008, at Ifo Camp, in Lagdera District, North Eastern Province, the accused murdered LIBAN MOHAMED AHMED.

In an endeavour to prove the case, the prosecution called eleven (11) witnesses.

The evidence adduced proves that Liban Mohamed Ahmed is dead. The cause of death is said to be shock due to the perforation of the small intestines, secondary to blunt injury. As far as PW 4, Dr. Jared Elisha Orlando, was concerned, the shock which led to the death of the deceased herein, could not have been caused by the operation which the doctor carried out. The operation entailed the opening up of the abdomen of Liban, cleaning out the faecal matter which had spilt into the abdominal cavity and then repairing the perforation.

Although Liban was not talking prior to the operation, he was able to talk thereafter, albeit in a slurred manner.

PW 4 also made it clear that the handling of the patient, in the hospital, could not have contributed to his death.

According to PW 1, it was the accused herein who assaulted the deceased. PW 1 testified that he witnessed the assault.

He was the only eye-witness, who testified at the trial. His brother, who is said to have also been an eye-witness, did not testify.

But the accused, through the issues raised when his advocate, Mr. Maweu, was cross-examining the prosecution witnesses, has indicated that he was not at the scene of crime, at the material time. He has suggested that he was in Nairobi at the time.

Therefore, as the incident took place at Daadab, the accused implies that he cannot have been in two places at the same time.

But the prosecution insists that the accused, is not only a refugee, who was within the refugee camp, where the incident took place, but also that he did not have the requisite Travelling Documents, that would have enabled him to travel outside the refugee camp at the material time.

Evidence before me indicates, on a prima facie basis, that the accused applied for and obtained registration as a refugee

from Somalia. In the application, there is a photograph of the accused herein. But the name on that application form is ABDIFATAH IBRAHIM ABDULLAHI.

Meanwhile, the prosecution has also demonstrated, on a prima facie basis, that the finger-prints on the application for registration as a refugee, and the finger-prints of the accused are the same.

That would place the accused squarely at the Ifo Refugee Camp, as a refugee from Somalia.

But then again, the accused appears to have been the holder of a valid National Identity Card. I therefore understand him to be saying that he did not need to obtain a Travelling Document from the Ifo Refugee Camp, Daadab, in order to travel to Nairobi.

Of course, in principle, a Kenyan would not need to obtain a Travelling Document from a Refugee camp, so as to travel from such a camp. But, in this instance, it has been shown to me, on a prima facie basis, that the accused held both a National Identity Card, as well as an Identification document as a refugee.

In the circumstances, as there was at least one eye-witness who placed the accused at the scene of crime, and who testified that it is the accused who assaulted the deceased in the stomach; and as the said injury conforms with the cause of death as verified by the doctor, I find that the prosecution has established a prima facie case against the accused, to warrant his being put on his defence. In the event, I hold that the accused has a case to answer. He is therefore put to his defence.

Dated, Signed and Delivered at Nairobi, this 22nd day of April, 2010

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FRED A. OCHIENG
JUDGE