



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Criminal Appeal 6 of 2009

**JAMES LOPEI LOTONEI APPELLANT
=VERSUS=
REPUBLIC RESPONDENT**

((Appeal from the decision of Hon. H. Nyaga ESQ. Senior Resident Magistrate delivered on 9TH January 2009 at the Senior Resident Magistrate's Court at Kabarnet in Kabarnet SRM No. 238 of 2008 on conviction and sentence)

JUDGMENT

I. Procedure

1. On the 1st day of March 2010, this Criminal Law Appeal case was argued before Osiemo J and concluded. Only the Judgment was pending to be written. The Hon. Judge was not available to write the judgment. The Appellant was asked by the Court whether he wished to argue his Appeal again but he opted to rely on the proceedings recorded by my predecessor as did the State.
2. Under Section 354(1) of the Criminal Procedure Code, this Court proceeded to read the proceedings and write this Judgment.

II. Background

3. E.S.T, a female adult was married to the deceased, Joseph Kiplagat Marowo. They had one child. The deceased left her to live elsewhere. She then began a relationship with the accused person. Unfortunately the accused was a very violent man. He beat her often until she left him and hired/rented her own house.
4. The deceased returned to her and moved into her house in April 2008.
5. On the night of 3rd May 2008 at about 10.00 a.m. whilst asleep in her house with the deceased, the Appellant James Ropei Lotonei knocked her door wanting to come in. she refused to open the door. The Appellant knocked down the door and came in carrying a cutlass (panga) in one hand and a torch in the other. He began to use the cutlass to attack the deceased asking him if he was the one who was now sleeping with her.
6. Blood began to flow from the deceased's neck and went all over the one room house, over the wall and on her clothes. She ran out but the Appellant managed to pursue her, and warned her that he would finish her the way he did the deceased. He then dragged her into the bush and rapped her three times. He further dragged her to the river and hit her with a stone. She managed to escape by tricking him that she wanted to go for a short call. She hid in the bush until morning. In the morning she returned to her house but did not find the deceased. She noticed the one roomed house had blood all over the house. She locked the house and went to her landlady to inform her that she was looking for her husband the deceased. She never saw the body of the deceased but was arrested.
7. It was through the information that she gave to the police that the Appellant was arrested the following day.
8. The scene of crime was visited by the police and sketch maps drawn.

III. Offence

9. The Appellant was charged with the offence of

MANSLAUGHTER Contrary to Section 202 as read with Section 205 of the Penal Code Particulars of offence

On the night (of) 3rd and 4th May 2008 at Ngosonik Village in Baringo District of the Rift Valley Province unlawfully killed Joseph Kiplagat Morowo.

10. The Appellant pleaded not guilty (12th June 2008). A trial was held before the Subordinate Courts whereby he stated in his unsworn defence that he used to work at a quarry. That on the material day he was selling busaa the whole day. On the following day he went to Marigat where he was arrested.
11. He found E at the Police Station. In his unsworn statement he admitted that she used to be his wife but he left her when he realized that he had HIV/AIDS and had lived separately since. He had been brought to the Police Station having been arrested over a completely different matter.
12. The trial Magistrate found the Appellant guilty and convicted him for the offence of manslaughter. Being dissatisfied with the conviction and sentence of life imprisonment imposed on him, the Appellant appealed to this High Court on 15th January 2009.

of Appeal

13. In his Petition of Appeal the Appellant stated that (in summary)

- (i) He pleaded not guilty to the offence
 - (ii) The Trial Magistrate erred in law and facts by convicting him on evidence of a single witness
 - (iii) He was convicted on inconclusive evidence of the witness
 - (iv) The trial Magistrate erred in law and facts when he did not consider the recent conflict between E.T and himself
14. In his argument before this Court, he stated that he never committed the offence. There was no evidence linking him to the killing of the deceased. The whole matter was due to political hatred, due to the "Vote" he had done. Last, It was also due to his separation and the disease/illness he had. The deceased was killed a distance from E.T's home. She escaped and informed the landlord she was going to pay rent. He was arrested convicted sentence and thereafter transferred to the Prison at Naivasha. He denied that he committed the offence.
15. In reply the state opposed the appeal. The evidence of a single witness may be relied on. The trial Magistrate warned himself of relying on the evidence of a single witness

V. Opinion

16. The main issue raised in his appeal is whether the Court relied on the evidence of a single witness to convict and sentence the Appellant.

17. In the case law of:-

James Njilithia -vrs- Republic HC.CRA. 136/2004 at Nairobi (Meru) Tunoi, Waki, Deverell JJA

The subordinate Court, the High Court at Meru and the Court of Appeal at Nairobi upheld the Conviction and Sentence of evidence of a single witness relied on against the Appellant. The Court of Appeal noted the original trial Court Magistrate (Muchelule as he then was) warned himself in admitting the evidence of a single witness.

18. In this case, the evidence of a single witness was taken down with caution by the trial Magistrate and warning given. The facts given by the said single witness was direct. The Trial Magistrate believed her evidence and the Appellant was duly convicted.
19. In reviewing the lower Court evidence on facts, I find that there is sufficient evidence to show that the Appellant was linked to the commission of the offence and did in fact murder the deceased as the relationship between the Appellant and the said Complainant E.T was that of a former boyfriend and girlfriend. The relationship between the complainant and the deceased being husband and wife, even if the Appellant was charged with murder the issue of his state of mind would arise namely, that of provocation that allows the offence of such nature be that of manslaughter.
20. Accordingly the law and facts herein had been proved against the Appellant. I do not wish to therefore interfere with the conviction and sentence as the crime was brutal.
21. This appeal is dismissed. The Appellant is to continue to serve his sentence.

Dated this 27th day of July 2010 at Eldoret

M.A. ANG'AWA

JUDGE

Advocate

- (i) J.K. Chirchir, Senior State Counsel instructed by the office of the Attorney General for the State/Respondent- Present
- (ii) James Lopei Lotonei (Appellant in person) - Present