



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Case 37 of 2006

ABDUL LONGOLAN EWOI ::::::::::: ACCUSED

VRS

REPUBLIC ::::::::::: PROSECUTOR

JUDGMENT

The accused person Abdul Longolan Ewoi is charged with murder contrary to section 203 and 204 of the Penal Code. It is alleged that on the 4th October 2006 at Soweto Village in Webuye Township, Bungoma District, he murdered Rose Nasimiya Luka. He pleaded not guilty.

The facts of the case are that on the 04/10/2006 around 2.00 a.m, the accused and the deceased returned to their one-roomed house at Soweto Village. The two were quarrelling with the accused accusing the deceased of moving around with other men. On entering the house, the two went on quarrelling and fighting on the same issue. The house was situated on a plot with many other tenants. The following day around 9.00 a.m, the deceased was found dead in the house. The accused was found hiding within the same room. A total of eight (8) witnesses testified in this case. PW1 was a resident of Langot Estate in Webuye Township. He testified that he knew the accused and the deceased who were residents of Soweto Estate about 3 ½ kilometres from his residence. The two stayed in one house rented by the accused. On the 4th October, 2006, around 1.00 p.m the witness was passing near the house of the accused when he saw a crowd gathered outside. He went there and found the deceased lying on the floor dead. He reported the matter to the police.

PW2 was a neighbour to the accused person. He said the houses on the plot were one-roomed. He knew the accused and the deceased stayed together as husband and wife for about one (1) year before the incident. On 3/10/2006 around 12.00 noon PW2 saw the couple leave their house together. They returned home around 2.00 a.m on 4/10/2006 and started quarreling over allegations that the deceased had been found with other men. It was on

4/10/2006 around 1.00 p.m that PW2 came to learn that the deceased was found dead in their house.

PW3 lived in the Molo Estate which was next to Soweto Estate. She testified that she heard screams from the house of accused and went there. She knew the accused and the deceased before the incident. There was a crowd gathered at the premises. The deceased lay dead on the floor while the accused was hiding between the roof and the wall of the house holding onto some timber on the roof. The deceased's body had injuries on the head.

PW4 is the son of the deceased. He testified that he stayed at Muchi Estate in Webuye in the homestead of his maternal uncle while his mother and accused stayed together. On the material day, PW4 went looking for his mother in the house where she lived with the accused on 04/10/06 around 9.00 a.m. He found the door closed. Neighbours told him they had heard the accused assaulting the deceased the previous night. On forcing the door open PW4 found his mother lying on the floor covered with a blanket. She had several injuries on several parts of the body. The toe nails had been plucked off. The body lay in a pool of blood. PW4 called neighbours who gathered at the scene. The accused was later seen hiding in the house and was arrested by members of public.

PW5 was the brother of the deceased. He did not witness the incident but was only called to the scene by his nephew PW4. He found the deceased dead and a crowd gathered at the home. PW6 was an identifying witness who witnessed the post mortem at Webuye District Hospital.

The doctor, PW7 produced the postmortem form. According to him, the deceased died of cardio-pulmonary arrest due to severe head injury and knee joint injury. The mental assessment report of the accused was produced by PW7. The accused was found mentally fit to plead and was aged 32 years.

PW8, the Investigating officer visited the scene and removed the body to the mortuary. He also received the accused from the members of public who had arrested him from the house where he lived with deceased. After investigations, he charged the accused with the offence.

The evidence of PW2 was that he lived on the same plot with the deceased and the accused. He said he had seen the couple leave their house together at 12.00 noon on 3/10/2006 and saw them return around 2.00 a.m in the morning of 04/10/2006. The witness had gone for a short call outside the house when he saw them return. There were three empty rooms between the house of the couple and that of PW2. After the two entered the house, they started quarrelling with deceased being accused of moving around with other men. The quarrel went on for sometime and it all went quiet. PW4 the son of the deceased came to visit his

mother the following morning around 9.00 a.m and found her dead with injuries all over the body. The accused was hiding in the same house at that time and was to be arrested there later by members of the public. PW4 testified that he found the door locked and forced it open. The body of deceased lay in a pool of blood in the one-roomed house. There was evidence of torture before death with toe nails having been plucked off and several injuries inflicted. PW4 said his mother stayed with the accused in one house. The witness said that the couple had a troubled relationship because they kept separating from time to time. PW3 the niece of the deceased supported this evidence that the couple quarreled quite often, parted ways and would later reconcile. This witness was a close relative to the deceased and lived only 200 metres away from the couple. The evidence of PW4 was that his mother had another man friend namely Kinisu Wafula who also lived in Webuye Town. The deceased used to go and stay at Wafula's house sometimes where PW4 would visit her. From the evidence on record, an inference can be drawn that the deceased stayed with Wafula during the short stints when she disagreed with the accused. It cannot be ruled out that when the accused went to the house of Wafula in the night to look for the deceased, he knew where he could find her. On the material day, PW4 testified that he passed through the house of Wafula that morning. He found Wafula with injuries on the body and that Wafula told him that he had been assaulted by the accused the previous night when he found the deceased sleeping in his house. The accused had taken the deceased from Wafula's house in the wee hours of the night and taken her to his own house. PW2 saw the couple return to their house at 2.00 a.m the same night and heard them quarrel on allegations that the deceased was moving around with other men. PW8 did not record the statement of Wafula despite PW4 having narrated to him the events which led to his mother being beaten up by her lover. This would have been an important witness in this case.

The accused in his defence, denied the offence. He told the court that the deceased was his lover for two years before the incident. At the same time, the deceased stayed with her husband one Kinisu. She came to the house of accused around 9.00 p.m on 03/10/2006 in a drunken state after quarreling with her husband. She slept in the house of the accused. The following morning, the accused went to work early in the morning leaving the deceased in the house. He returned home around 11.00 a.m and found the deceased dead in the house. The accused also denies that he was hiding in the house when the witnesses and members of public came.

The evidence of the key witness PW2 was that the accused was seen returning to the house

with the deceased at around 2.00 a.m on 04/10/2006. They quarreled for sometime and slept. The deceased was found dead by PW4 around 9.00 a.m with multiple injuries. PW2 was a neighbour and there is no evidence to show that he knew PW4. PW4 did not live with his mother but lived with his uncles in another area. As such, there is nothing to suggest that PW2 conspired with PW4 to frame the accused. I found the two witnesses credible. Their evidence that the accused was arrested hiding on the roof borderline of the house was corroborated by PW3 and PW5. I found the defence of the accused untrue considered alongside with that of the prosecution on the chronology of events.

There was no eye witness who saw the accused inflict the injuries which led to the death of the deceased. However, the facts analyzed in the foregoing paragraphs point to the guilt of the accused in this case. The witnesses PW1, PW2, PW3 and PW4 testified that the accused and deceased lived together in a relationship of a husband and wife though they were not legally married. This dislodges the defence of the accused that the deceased was only his lover who came to sleep in his house sometimes. It was not disputed that the deceased had another lover namely Wafula Kinisu and whom she may have visited on the material night on 03/10/10. PW4 was told by the said Wafula, that the accused had found the deceased in his house. He became violent and even demolished a section of the mud house, assaulted Wafula and went with his lover the deceased to his house at Soweto village. The evidence of a quarrel between the accused and deceased from 2.00 a.m in the material night was followed a few hours later by the discovery of the deceased inside the house of accused. The accused was arrested in that house contrary to what he told the court that he had left for work that morning.

I find that the circumstantial evidence on the record is so overwhelming against the accused that the death of the deceased cannot be attributed to any other person but him. It is my finding that the prosecution has proved beyond any reasonable doubt that the accused was the one who caused the act that resulted in the death of the deceased.

I proceed to evaluate the evidence of the prosecution on whether malice aforethought has been proved against the accused. The accused came with the deceased in his house quarrelling that night around 2.00 a.m. PW2 confirmed that the quarrel ended after sometime and the couple slept. The deceased was dead by 9.00 a.m. The most plausible conclusion is that the accused assaulted the deceased when they woke up in the morning and most probably for the same reason that she was moving with another man. There was a lot of time between 2.00 a.m and day break. The accused would have been expected to have sobered up by that time. It is assumed that there was no fighting or any commotion before PW2 left his house in

the morning because he would have heard it. The injuries inflicted by the accused on the deceased were very severe. The doctor found that she had extensive bruises and abrasions all over the scalp, face, neck, upper and lower limbs, abdomen and chest. The toe nails had been plucked out. These injuries were inflicted over a period of time, consistently and persistently until the deceased died. The accused can not have intended any other result but death as he assaulted the deceased. The accused had time to cool down from his rage when he found the deceased at Wafula's house. The severity and multiplicity of the injuries is evidence of malice aforethought on the part of the accused. I find that this evidence proves that the accused had intention to kill the deceased which he manifested in the course of the brutal assault. The accused is therefore guilty of murder contrary to section 203 as read with section 204 of the Penal Code.

I sentence him to suffer death in the manner authorized by the law.

F. N. MUCHEMI
JUDGE

Judgment dated and delivered on the ...22nd day of ...SEPTEMBER, 2010 in the presence of the accused, his counsel Mr Situma for Mr Kraido and the state counsel Mrs Leting.

F. N. MUCHEMI
JUDGE