



IN THE HIGH COURT OF KENYA

AT NAKURU

MURDER CASE NO.77 OF 2008

REPUBLIC.....PROSECUTOR

VERSES

STEPHEN EKWAM TOPOLE.....1st ACCUSED

SAMUEL LOKICHAR LOJORE2ND ACCUSED

RULING

Both accused persons are charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. It is alleged that on the night of 9th and 10th April, 2008 at Alphega Sisal Estate, Koibatek, where the accused persons and deceased worked, the former jointly murdered the latter.

Evidence upto this stage show that there was a disagreement over a debt of Kshs.20/= between the 1st accused and **P.W.1, Gilbert Shikandia Rapando (Rapando)**. On the night in question, Rapando met the two accused persons as he walked home from a pub within the sisal estate. The 1st accused demanded a refund of his money. Rapando pleaded with him to accompany him to his (Rapando’s) house for payment. The 1st accused insisted and at this stage the deceased emerged and began to mediate. An argument ensued between the deceased and the 1st accused in Turkana language when the deceased told Rapando to go home. This appeared to have annoyed the 1st accused who took out a knife and stabbed the deceased on the stomach.

The only evidence touching on the 2nd accused can be summarized as follows:

- 1. that he was in the company of the 1st accused.

Rapando stated that:

“The 2nd accused was next there. He was in group.”

In cross-examination, Rapando clarified that:

“There were many people. I only recognized the two accused persons. 2nd accused did not talk to me.The 2nd accused stood by doing nothing. He did not ask the 1st accused to leave me alone. He did not tell him to let me go home to pay Kshs.20/-.”

It is said that when the deceased was in hospital, he made a statement to **P.W.4 P.C. Rejulus Ole**

Parsalach which he (the deceased) did not sign to the effect that the 1st accused snatched the knife from the 2nd accused and stabbed him (the deceased).

1. It is further alleged that the 1st accused told **P.W.2 Ole Soite Jackson** that it was the 2nd accused who had stabbed the deceased.
2. That the 2nd accused person's house was searched and a blood stained knife recovered.

I will consider each of the above three issues. There is no doubt that the 2nd accused was with the 1st accused person. What role did 2nd accused play?

According to Rapando, the 2nd accused person simply stood by. He did not intervene and at the same time he did not attack the deceased. Secondly, the deceased is said to have spoken to **P.W.2, Ole Soite Jackson** immediately after the stabbing and only said he had been stabbed by the 1st accused person.

The deceased is also alleged to have spoken to **P.W.4 P.C. Rejulus Ole Parsalach** while in hospital and told him that the 1st accused snatched the knife from the 2nd accused and used it to stab the deceased. Again it is clear from this that there was no *mens rea actus reus*.

Finally, it is said that the 1st accused named the 2nd accused as having stabbed the deceased. That would amount to an accomplice evidence. It is also alleged that a blood stained knife was recovered from the 2nd accused person's house. Two issues arise from this discovery. There was evidence that there are over 400 houses within the estate. Where is the evidence that the house belonged to the 2nd accused person. Secondly, the blood stained knife was not subjected to forensic analysis to link the blood on it with the deceased.

For these reasons, a *prima facie* case has not been established against the 2nd accused person. It is ordered that **Samuel Lokichar Lojore (the 2nd accused)** be acquitted under **section 306** of the **Criminal Procedure Code** and shall be set at liberty forthwith unless held for any other lawful reason.

I am, however, satisfied that there is *prima facie* case against the 1st accused person, who I now call upon to make his defence.

Dated, Delivered and Signed at Nakuru this 21st day of December, 2010.

W. OUKO

JUDGE