



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Case 14 of 2008

REPUBLIC.....PROSECUTOR

VERSUS

CLINTON KIPROTICH SUGUT.....1ST ACCUSED

ROBERT KIPKEMOI KORIR.....2ND ACCUSED

RULING

(Section 306 of the Criminal Procedure Code).

I. Background Procedure.

1. Accused No.1 and 2 were separately charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

The particulars of offence being;

On the 16th March 2008 at Kibogo village in Kericho District within Rift Valley Province with others not before court murdered Andrew Kimutai Bii.

2. Clinton Kiprotich Sugut was arraigned before this court with the said charges on 15th April, 2008 whilst Robert Kipkemoi Korir was arraigned on 8th August 2008. Both separately pleaded not guilty to the information on the 8th December 2008, the two accused appeared before this court, the two cases were consolidated being HCCR.14 of 2008 and HCCRA.32 of 2008. Proceedings were recorded in HCCR.14 of 2008. Each of the accused persons was represented by separate advocates. Clinton Kiprotich Surgut was represented by M/S Bett & Co. advocates whilst Robert Kipkemoi Korir was represented by M/S Obondo Koko & Co. Advocates.
3. The trial commenced on 7th October 2009 when the State prosecution called evidence and did not close their case until 2nd December 2008.
4. The difficulties that arose is that PW4's statement had not been handed over to the defence advocate to allow them to take instructions from their client. After this process was undertaken PW4 was permitted to give evidence. The other witness was PW6 the investigating officer. He had been transferred before he completed the

investigations of this case to some far filing area in North Eastern province. On the day he was to attend court, floods had cut off the roads, the court had to adjourn to await his evidence which he finally gave.

II. Facts

5. Briefly, the State tried to show that one Andrew Kimutai Bii died as a result of foul play or mob justice. PW3, a female adult owned cows. These cows were stolen and Andrew Kimutai Bii the deceased approached her and informed her that he was able to trace the cows if paid Ksh.1,500/=. She did not have the money sought right away but she managed to get the funds and gave it to the said deceased. The deceased never delivered the information of the whereabouts of the cows. The court procedure was for the said PW3 to make a report to the police and allow the police to investigate. She instead managed to get some youth who got hold of the deceased and frog marched him to tell them where the cows was. At one point PW4 was said to have kept the cows. He was drunk but was approached too and both deceased and PW4 were beaten. PW4'S mother was able to rescue him and he was left alone. He informed the court he was so drunk and did not really know what was going on. PW3, the owner of the cows had minor children she left the crowd with the deceased to return home and did not know how it all ended until informed later that the deceased and died. She was arrested and locked in the cells for five days.
6. The investigating officer PW6 visited the deceased where the deceased was found. To his conclusion the deceased was beaten up by the mob. He then was pushed towards the river bank. He slipped and partially fell into the river where he was left. He may have died due to suffocation due to drowning. The post-mortem revealed the multiple fractures to his ribs that were found to be injuries to his body by the doctor PW2. There were wounds on the face left side of the head, elbows and legs. The ribs were broken at No.8, 9, 2, 11 & 12. The cause of death was suffocation.
7. The investigating officer was of the view the deceased fell partially into the water and was unable to get up.
8. He then received information that the accused No.1 was the ring leader in administering the mob justice on the deceased till death. He used his information and arrested accused No.1. Accused No.2 was never apprehended by him as he was transferred out of the jurisdiction of Kericho District. It therefore meant that the deceased killers who inflicted injuries on him as a mob are at large.

III. Submissions.

9. The advocate for accused No.2 stated there was no evidence to show any connection between accused No.2 and the deceased. No arresting having been made upon him, then the Court of Appeal decision of **James Muchane Kaulo v R. HCCRA.68/03** applies (*Omolo Okwach JJa & Deverrel Ag. ja*) ruled that the officer who arrested the appellant was never called leaving a gap in the prosecution's case. Though it is not a must the prosecutions arresting officer should be called to give evidence in some circumstances this was essential. Other cases to support these contention are;
 - **Oluoch v R (1985) KLR 549** (*Cheson Nyarangi & Platt ag. jja*) dealing with a robbery with violence

dock identification and the ingredient of the offence.

- In the case law of **R. v Lucy Njeri Kamande (HCCRA.61/03 Nyeri)** (Okwenyu J). The lack of chain of event did not permit the court to put the accused on her defence.
10. The case of **R. v Wesley Kipkoech Mutai HCCR. Case No.11/08 Kericho** (G. B. M. Kariuki j,) in a ruling on the issue of whether there is a case to answer, the Hon. Judge relied on the ruling of **Ramalal T. Bhati v R. (1957) E A 332** that dealt with when the standard of proof or a prima facie case may be established.
 11. The State counsel P. Kiprop's brief was held by the Senior Principal State Counsel B. L. Kivihyia who stated he would make no submission on the case.

IV. Findings.

12. This murder case has been brought prematurely to court. More investigation was required. The State ought to have recommended an inquest. The only person who mentioned the two accused was PW3 who went to look for her children presumably PW4. No infestations otherwise was caused. One may almost say it was sabotaged by transferring the investigating officer out of the station then, bring the suspects to court before the case was ripe.
13. I have listened to the submissions by the advocates. I have noted that the chain of event linking accused No.1 and the incident was broken accused No.2, holds no evidence by witnesses before court to link him to the offence.
14. The key witness was the owner of the cows PW3 who may have clearly identified those two took hold of the deceased to beat him. She left early and did not witness the beatings and this mob justice linked to the deceased.
15. My findings under **Section 306** of the **Criminal Procedure Code** is that the evidence for the prosecution having been concluded and upon hearing arguments from the advocate for the defence and none from the advocate for the prosecution a record finding of "not guilty." is entered against the accused No.1 and 2 in this murder trial.
16. The two accused are set at liberty unless otherwise lawfully held.
17. I thank the two advocates for their case laws and arguments in this case.

Dated this 7th day of December 2009 at Kericho

M. A. ANG'AWA
JUDGE

Advocates

- F. O. Koko instructed by Koko Obondo & Co. Advocates.
- M/S Mitey instructed by Bett & Co. Advocates.
- B. L. Kivihyia holding brief for P. Kiprop for the Republic instructed by the attorney General

ORDER:

A copy of the Judgment be given to the advocates for the Republic and the Defence.

M. A. ANG'AWA
JUDGE