



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Case 88 of 2003

REPUBLIC PROSECUTOR

VERSUS

JAMES EKAI EMTON

ACCUSED

RULING

JAMES EKAI EMTON has been charged with the offence of murder

Contrary to section 203 as read with section 204 of the Penal Code

Cap 264 Laws of Kenya. The particulars of the charge are that

JAMES EKAI EMTON, whom I shall hereinafter refer to as 'the

accused' murdered DAVID KIPKOSGEI KEINO on 12/10/2003 in

Megun Sub-Location in Uasin Gishu District of the Rift Valley

Province.

The prosecution which led evidence through nine witnesses has now closed its case and Miss Oundo, the learned State Counsel, is of the view that the State has discharged its burden of proof, and she therefore urges the court to place the accused on his defence.

My role at this point is to establish whether, based on the evidence on record, it can be said that the State has a prima facie case to warrant placing the accused on his defence. In other words whether there is sufficient evidence upon which the accused could be convicted if he offers no defence. It is incumbent upon this court therefore to evaluate the evidence on record with a view to reaching such a finding.

It was apparent that apart from PW8 and PW9, all the other witnesses were not honest. Their evidence bordered mostly on untruths and outright lies, and was mostly unbelievable especially on issues pertaining to the fact that the home, where the incident occurred was a busaa den and that a fight had occurred within that home on the material day between people whose identity the witnesses kept as secret.

Based on the evidence on record, I formed the opinion that PW1 had refused to give the accused his change after he had purchased busaa from her, otherwise there would have been no reason for her father

(PW 4) and her brother (PW2) to let him wrestle her to the ground without coming to her aid. Indeed a neighbour (PW3) who went to find out why people were screaming in that home was quite categorical that the home was a busaa den.

The evidence otherwise tends to reveal that there was a fight in that home at the time when it is alleged that the accused hit the deceased for according to the doctor who attended to the accused on 17/10/2003 (PW8), the accused had injuries which he estimated to be five days old on his upper limbs; his left arm was swollen, oedemalised, tender and painful, and an X-ray revealed a complete fracture of the left radius. He classified the injuries as grievous harm.

But that was not all for according to the doctor who performed the postmortem on the body of the deceased (PW9), he had sustained a blunt head injury; the fracture of left parietal and temporal bones, had caused excessive hemorrhage on the interior of skull and below the cover of the brain, above menengis and below brain tissue; that there was oedema of brain and lungs, which caused immediate death, which by any standards would have been within minutes of sustaining the injuries, yet his brother (PW4), had testified that the deceased not only attempted to walk soon after the attack, but that he regained consciousness two hours thereafter, but that he died at 9p.m. which was about six hours after the alleged attack. I find that that evidence contradicts the findings of PW9.

Unfortunately, I find that no investigations were carried out in this matter. There was no proof that the exhibit which was produced was the murder weapon. All that the Investigation Officer (PW6) did was to escort the accused to the hospital for the assessment of his mental status. He did not even notice that the accused had sustained the injuries which were revealed by PW8. It was clear from his evidence, that the officer relied on and acted on information received from the area Assistant Chief (PW5) who did not witness the incident, but who had in turn relied on information received from one David Keino, the village elder who had not witnessed the incident either, and who was not called to give evidence.

It was important for the Police to investigate the matter fully especially in view of the fact that the life of an accused was at stake.

Based on the above findings, I find there was no evidence to link the accused to the murder and further that the prosecution has not established that it has a prima facie case against him. I am thus unable to place the accused on his defence.

In the circumstances, and being duly empowered under section 306 (1) of Criminal Procedure Code I do hereby find James Ekai Emtton not guilty of the charge of murder and I do acquit him accordingly.

Dated and delivered at Eldoret this 29th day of June 2006.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Omutelema for the State

Mr. Chepkwony for the accused