

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Criminal Case 4 of 2001

REPUBLIC PROSECUTOR

VS

ISAAC BOIYO JASON ACCUSED

RULING

The accused herein, Isaac Boiyo Jason, is before this court facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. It is said that on the 29th day of July 2000 at Kiwanja D. C area, Chepkurkur sub-location, Emia Location in Mount Elgon district within Western Province murdered James Koringi Soet.

At the close of the prosecution's case nine witnesses had testified. The deceased and the accused were brothers and sons to Jason Soet Sichei (P.W.1). P.W.1 said that before he left for Trans Nzoia, the deceased and the accused lived in harmony though the deceased had complained that the land he received from P.W1 was small. P.W.1 learnt of the deceased's death while he was in Trans Nzoia. The other witness who said the name of the accused was mentioned was Felix Mutara (P.W.9). However the evidence was not corroborated because whoever told him about the accused's name as a possible suspect was not called to testify. So far the evidence of P.W.1 and P.W9 were the only evidence which incriminated the accused.

The learned Principal State counsel and the learned defence Counsel submitted at length under section 306 (1) of the criminal Procedure code. It was the submission of the principal State counsel that the prosecution had established a prima facie case necessary to place the accused on his defence. He argued that there was evidence that the deceased and the accused had serious differences over a piece of land. He cited the evidence of P.W.1 and P.W.9 to buttress his submissions.

On his part, Mr. Barasa who appeared for the accused urged this Court to acquit the accused because the prosecution had failed to establish the ingredients necessary to prove the offence of murder.

I have considered the able submissions of both counsels on the part of the prosecution and the defence. I have also taken into account the evidence tendered by the 9 prosecution witnesses. There is no dispute that the deceased died on 29th July 2000. The evidence tendered does not show who inflicted the fatal blow which killed the deceased. The circumstantial evidence does not connect the accused with the offence. There is strong believe that the accused had the opportunity to commit the offence. But there is also the possibility of other people having committed the offence. No evidence was laid to exclude that possibility.

After a careful consideration of the evidence and the learned counsel's submissions, I have come to the conclusion that there is no evidence that the accused committed the heinous act against the deceased. I find him not guilty. He is acquitted. The accused should be released from custody forthwith unless lawfully held.

Dated and delivered this 28th day of October 2005.

J. K. SERGON

JUDGE