



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

CRIMINAL CASE NO. 76 OF 2017

BETWEEN

REPUBLIC PROSECUTOR

AND

BOSCO ROBINSON LANTAIYA..... ACCUSED

JUDGMENT

1. **BOSCO ROBINSON LANTAIYA (Accused)** is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars of the charge are that

On 30.09.2017 at Tree Top village in Wamba Location within Samburu East Sub-County within Samburu County murdered PILOS LOLONJORE

PROSECUTION CASE

2. On 29.09.2017 at about 7.00 pm, Accused attacked Pilos with a piece of timber which left him with fatal injuries. The incident was witnessed by Moses Wangai Wanyiri, Harun Locha Lekunirai and Osama Laporole who said they saw Accused who was armed with a piece of timber walking behind Pilos and when he caught up with him and without uttering a word hit him on the forehead and when he fell hit repeatedly on the head from where he was rescued by Antonella Paul who carried him on a wheelbarrow to Wamba hospital where he was admitted. Antonella Paul informed Pilos' sister Veronicah Lolonjore concerning Pilos' admission in hospital and when he went to visit him on 30.09.2017 was informed he had died. Accused was subsequently arrested on 30.09.2017 by members of public who handed him over to PC Hillary Kipkurui and matter was investigated by CPL Gayord Onyango who caused Accused to be charged.

DEFENCE CASE

3. The accused gave a sworn statement. He conceded that he attacked Appellant with a piece of timber after he allegedly stole from his house and also spread word that Accused was HIV +.

4. **Section 203** and **204** of the **Penal Code** under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought. The sections read as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Any person who is convicted of murder shall be sentenced to death.”

5. When none of the aforesaid elements are proved but there is otherwise an unlawful killing of another human being, the person commits the felony of manslaughter under **section 202 Penal Code** which is punishable under **section 205 Penal Code** by a term of imprisonment extending up to life.

ANALYSIS AND FINDINGS

6. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the

death of Pilos; that Accused caused the death and that he was actuated by malice.

(a) The death of the deceased

7. The postmortem form **PEXH. 1** reveals that the Pilos suffered 4 deep cuts on the temporal and occipital regions, the largest measuring 8x3 cm, a 6x2 cm deep cut the right eye brow, depression of the frontal bone indicating a skull fracture and bleeding through the nose and mouth. The Postmortem form marked PEXH. 1 demonstrates that Pilos died of cardiopulmonary arrest due to hemorrhagic shock arising from severe head injury caused by blunt force.

(b) Proof that accused person committed the unlawful act which caused the death of the deceased

8. Accused in his defence forthrightly conceded that he caused the injuries that led to the death of Pilos.

c) Malice aforethought

9. The offence of murder is complete when, “malice aforethought” is established if, pursuant to **section 206** of the **Penal Code** evidence proves any one or more of the following circumstances:

“(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) An intent to commit a felony;

(d) An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

10. In this case, evidence by Moses Wangai Wanyiri, Harun Locha Lekunirai and Osama Leporole that Accused repeatedly hit Pilos on the head was corroborated by medical evidence which reveal that Pilos suffered numerous deep cuts on the head and fracture of the skull as a result of which he died.

11. Accused pleads the defence of provocation. Section 207 of the Penal Code provides for provocation as follows: -

When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.”

12. I have considered the evidence by Moses Wangai Wanyiri, Harun Locha Lekunirai and Osama Leporole and which disapproves Accused’s defence that Pilos insulted him and said that neither Accused nor Pilos utter a word before Accused set upon Pilos hitting him on the head repeatedly.

13. And even Accused had been provoked, the fact of repeatedly blows to Pilos’ head that inflicted injuries that led to his death leads to the presumption that Accused knew or ought to have known that his action would probably cause the death or grievous harm to Pilos. (See **Morris Aluoch v Republic Cr. Appeal No. 47 of 1996 [1997] eKLR**).

14. Having considered all the evidence in this case, I have some doubt in my mind that malice aforethought on the part of the Accused has been proved.

15. Accused who was a police officer at the time of commission of this offence had a duty to *protect of life and property*. *He failed to protect the life of Pilos and instead took it away unlawfully*. I find Accused guilty of murder contrary to **Section 203** as read with **Section 204** of the Penal Code and he is convicted accordingly.

DELIVERED AT MERU THIS 09th DAY OF DECEMBER 2021

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Accused - Present

For the Accused persons - Mrs.Kaume Advocate

For the State - Ms. Mwaniki