



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

CRIMINAL DIVISION

CRIMINAL (MURDER) CASE NUMBER 8 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

MUSA MERINYANG LOPELA ACCUSED

CORAM: LADY JUSTICE RUTH N. SITATI

RULING

Introduction

1. The accused herein, MUSA MERINYANG LOPELA, is charged with **murder** contrary to **Section 203 as read with Section 204 of the Penal Code**, the particulars being that on the 27th May, 2019 at Sina village, Pokot South sub-county within West Pokot County, he murdered CHEDONGINWEI LOWENE.
2. The accused took plea on 2nd July, 2019 and denied committing the offence.

The Prosecution Case

3. Briefly the prosecution case is that the deceased herein, who was mother-in-law to the accused lived with the accused and his wife Elizabeth Chemtai Merinyang who testified as PW1 (Elizabeth) in the accused's home. They had lived with the deceased since the year 2009. According to the evidence on record, the deceased's stay in the accused's home was less than peaceful. There were incessant quarrels over the deceased's livestock which the accused was in the habit of disposing of as and when he felt like on the ground that whatever livestock was in the home was his since the land on which they grazed belonged to him.
4. As a result of the many quarrels, the accused issued death threats to both the deceased and Elizabeth. Elizabeth had to flee for her life when the threats of being killed became too loud and frequent. When Elizabeth fled, she left the deceased and Elizabeth's sister's daughter by the name NAOMI CHENANGAT (PW2) – NAOMI – in the home with the accused.
5. On the morning of 26th May, 2019 Naomi left he deceased at home as she went to church. The deceased promised to follow Naomi to church a little later but she never did so. When Naomi returned home much later in the day, she did not find the deceased at home. She also realized that the padlock to the deceased's house had been changed and when Naomi asked the accused whether he knew where the deceased was, he told her he did not know where the deceased was. That evening a search was mounted for the deceased, but she was not found. On the following day the deceased's body was found buried in the river near her home. The body was removed by police and taken to Kapenguria County Referral Hospital for post mortem.
6. The post mortem was carried out on 29th May, 2019 at the Kapenguria Referral Mortuary by Dr. Samuel Thuo who was represented in court by Dr. David Karuri Maina, PW6 (Dr. Maina). Dr. Maina told the court that the deceased had a 2 x 2 cm cut wound on the left occipital region with blood clots in it. She also had a deep cut wound 3 cm deep behind the right ear near the pinna. The deceased also had many bruises on the face and head with multiple bruises extending from the left rib cage to the left thigh. There was bleeding into the chest cavity.
7. Dr. Maina also testified to other injuries on the right side of the neck extending to the anterior aorta which was severed anteriorly and was 1 cm wide. The head also had epidural haematoma of about 20 mls (not clotted). The brain in the occipital region of the head was depressed. In the doctor's opinion the cause of death was haemorrhage as evidenced by occipital haematoma in the neck, left hemothorax and conjunctival palour. The haemorrhage according to Dr. Maina was caused by blunt force trauma to the head, neck and left side of the chest wall. The post mortem report was produced as Pexhibit 2.

8. Number 83843 Cpl Lawrence Kitisia, the investigating officer testified as PW5. He told the court that after they had received a report about the alleged murder the accused herein surrendered himself to the police at Tapach AP Post on grounds that villagers were baying for his blood. The accused was eventually escorted to Kapenguria Police Station and locked up pending appearance in court. After investigations Cpl Kitisia charged the accused person with murder. He also arranged for and attended the post mortem examination on 29th May, 2019.

submissions

9. The parties did not make any submissions on whether the accused herein has a case to answer.

Analysis and Finding

10. I have carefully considered the evidence on record and I am satisfied that the prosecution has established a *prima facie* case against the accused requiring him to be put on his defence. See ***Bhatt -vs- Rex [1957] EA 336***.

11. For this reason, I now call upon the accused to defend himself against the allegations of murder either by giving sworn or unsworn evidence and calling witnesses. If the accused gives sworn evidence he may be asked questions both by the court and the prosecution. The accused also has the option of remaining silent and letting the court decide the case on the strength of the evidence that is before it.

12. The accused may now indicate to the court how he proposes to offer his defence.

13. Orders accordingly.

Ruling delivered, dated and signed in open court at Kapenguria on this 5th day of May, 2020.

RUTH N. SITATI

JUDGE

In the Presence of:-

Mr. J. Okoth for the State/Prosecution

M/S Chebet for Opondo for the accused

Mr. Juma – court assistant