



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL CASE NO. 55 OF 2012**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**LOTUU TUWEI LUCHULIA..... ACCUSED**

**RULING**

*LOTUU TUWEI LOCHOLIA* is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of the offence are that on the 22<sup>nd</sup> day of June, 2012 at Natululu village, Kositei location in East Pokot District, within Baringo County, the accused murdered Musa Lomorian Ngurakapel.

On 23<sup>rd</sup> June 2012, PW-1 the father to the deceased received a report that one of his sons, one *Musa Lomorian Ngurakapel* was murdered. He went to the hospital to see the son. He had head and neck injuries, and could not speak. He was treated and referred to Kabarnet Hospital. The deceased's sister, who is PW-2 in this case received the report about the incident on 24<sup>th</sup> June 2012 at 8.00 a.m. The report was given by her sister Michel, who told her on phone that the deceased had been beaten. She went to the hospital at Chemolingot. She found him admitted with a swollen head and an injury on the right hand. The eyes were also injured. He could not speak. The deceased wife told PW-2 that the deceased was beaten. PW-2 went to Matitir and told villagers to look for the suspect. They traced him at his farm and was held. The accused and the deceased used to drink together.

PW-3, the uncle to the deceased, was informed by deceased's wife on 23<sup>rd</sup> June 2012 at 8.00 a.m that the deceased was in hospital.

He went to Chemolingot hospital. He found the deceased there. He had an injury on the left hand, on the ribs, forehead and top of the head. They transferred the deceased to Kabarnet district Hospital on a Sunday. On Monday he passed on. They went looking for the accused. They got him in his shamba and arrested him. The accused and the deceased were working together as lorry loaders.

The post mortem was conducted by *Dr. Robert Pukose* who at the time was a consultant medical surgeon at Kabarnet District Hospital. He conducted the post mortem on the deceased, on 9<sup>th</sup> July 2012. He noted that the body had superficial abrasion on the left temporal area which were 2x1 cm, with left parietal scalp laceration of 6x3 cm. There was no cyanosis or petechiae. No darkening of mucus membrane. There was a missing incisor on the lower jaw but was old. The head had left parietal scalp laceration of 6x3 cm which was recent. He opened the skull and noted massive subdural clot measuring 9x9 cm. No fracture of the skull was noted. Nervous system had massive subdural haematoma pressing to the brain. The doctor opined that the cause of death was massive subdural haematoma, sustained from head injury resulting from blunt head trauma. He thus filled the postmortem report of which he produced as Exhibit -1.

The matter was investigated by PW-5. On 26<sup>th</sup> June 2012 at 7.00 p.m the suspect in this case was handed to him at Nginyang police station, by AP's from Chemolingot AP's camp. They reported that the accused had assaulted *Lomorian Ngurakapel*. The deceased at the time was admitted at Kabarnet General Hospital in serious condition. He re-arrested the accused and recorded statements from some members of the public who had accompanied the AP's from Chemolingot AP's camp. The following day he decided to charge the accused with assault. He decided to visit the victim but was told

he had passed on. He organized for postmortem and had accused charged with murder. The deceased wife was the eye witness. On 23<sup>rd</sup> July 2019 the prosecutor informed the court that the deceased's wife passed on, and they closed their case.

At this juncture, the court must determine as to whether the prosecution have established a prima facie case, to warrant the accused be placed on his defence.

In this case the prosecution called no eye witness. PW-1, PW-2 and PW-3 were informed about the incident. Apart from PW-2 and PW-3 stating they took part in arresting the accused, they did not tell us how they connected him to the offence. PW-5 the investigating officer

stated the deceased's wife was the eye witness but she was not called as a witness. The prosecution said she passed on, and closed their case. It therefore follows that the prosecution did not establish that the death of the deceased was caused by the accused person and that he had the required malice afterthought. As such, a prima facie case is not established against him, and he is accordingly acquitted of the offence charge with under *Section 210* of the *Criminal Procedure Code*. He is set free forthwith unless otherwise lawfully held.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 8<sup>th</sup> day of October, 2019.**

In the presence of:-

- (1) Mr. Miyienda holding brief for Mr. Chepkwony for the accused person
- (2) Mr. Chacha for state prosecutor
- (3) Ms Abigail - Court clerk