



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 55 OF 2009

REPUBLIC.....STATE

VERSUS

GIBERT KIBOIACCUSED.

RULING

1. The accused herein is facing a charge of murder contrary to section 203 as read with section 204 of the penal code. The particulars of the offence are that on the 11th day of October, 2009 in Mt. Elgon District within Western province , he murdered LCN (herein referred to as the deceased).

2. The prosecution called 7 witnesses in the case. Their case was that on the 11th October, 2009 the deceased minor left her home in the company of two other minor children Pw1 and 2 and went to the home of the deceased's aunt called F . The place was about 30 minutes walk from the home of the deceased. On getting there the children were received by Catherine Chebet PW3. The children stayed at the home until 4 pm when they took the return journey. They reached at their home at 6 pm. The children parted with the deceased and went to their separate homes. The deceased was never seen again. The mother to the deceased Pw4 looked for her to no avail.

3. Sometimes later a skull was found in the shamba of Joyce PW5. The deceased's mother PW4 went to the scene but she was unable to identify the skull. Later some clothes were found near the place where the skull had been found. The mother to the deceased went to the place and identified the clothes as those of the deceased. Policemen were called who went there and took the clothes.

4. On the 12/11/09, a doctor at Webuye District Hospital conducted a postmortem on the body. The doctor could not identify the gender as only a skeleton was remaining with no flesh. The time of death was estimated at between 2 and 12 weeks. From the state of the skeleton the doctor could not determine the cause of death. The post mortem report was produced in court as exhibit - EX 1.

5. The investigating officer did not turn up to testify in the case. There was no evidence as to why the accused was arrested and charged with the offence.

6. The only witness who mentioned the accused in the case was Catherine Chebet PW3. Her evidence was that on the material day she was at the home of her aunt F. That at midday PW2 and the deceased went to the home. That the family herdsman ,the accused ,was not at the home when the children arrived at the home. He returned home between 1 and 2 Pm and she served him with lunch. The children were at the time in the shamba. That in the evening she escorted the children upto Cheptais and left them to go home. That when she walked the children to Cheptais the accused was herding cows in the opposite direction.

7. At the close of the prosecution case, the counsel for the accused Mr. Munyendo, submitted that the prosecution has not established a prima facie case against the accused. That there is no circumstantial evidence against him. That no witness gave evidence to link him with the offence. That the post mortem did not establish the cause of death. Counsel urged the court to acquit the accused under no case to answer.

8. A *prima facie* case, it has been held , is one on which the court could convict on the evidence adduced by the prosecution if no explanation is offered by the defence – see **Ramanlal Trambaklal Vs Republic (1957) EA 332.**

9. In this case there was virtually no evidence adduced that tended to connect the accused with the offence. There was no evidence why he was arrested and charged with the offence. There was no evidence that he was sighted in the company of the deceased. The evidence available cannot lead to the conviction of the accused if the accused offered to give no defence. The prosecution has thereby not established a prima facie case against the accused. The accused has no case to answer and is accordingly acquitted of the charges under section 210 of the Criminal procedure Code.

Delivered, Dated and signed at Kakamega this 4th day of July, 2018

J.NJAGI

JUDGE

In the presence of :

Ngetichfor state

Munyondo.....for accused.

George.....court assistant