

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 62 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

BOAZ KIPLIMO ALIAS ADVENTURE.....ACCUSED

RULING

1. BOAZ KIPLIMO Alias **ADVENTURE** was charged with the offence of murder Contrary to **Section 203** of the **Penal Code** as read with **Section 204** of the **Penal Code** whose particulars were that on 6th August 2014 at **ELDORET** township in **ELDORET WEST DISTRICT**, he murdered **JOSEPHAT EKAI** (deceased). The appellant denied the charge.

2. JULIUS MAINA (PW1) who lives on the streets told the trial court that on the date in question, one **SILAS** brought the accused to them, with a request for help to apprehend and take him to the police station. PW1 obliged.

Later when PW1 went to the main stage he found a crowd gathered around **EKAI** who lay dead.

PW1 did not witness the killing and on cross examination stated:

“Silas Chogo is the one who brought accused to us.... Silas said Adventure had stabbed another person with a broken bottle. When we arrested Adventure he pleaded with us not to take him to the mob but to the police station...”

He confirmed that there had never been disagreements between accused and deceased. **JOHN ELIMINIM** (PW2) another street dweller arrived at the stage at about 7.30 pm and was informed by the touts that one of his own had been stabbed and was bleeding. He and other street people carried the injured bleeding person to **Eldoret Police Station**, but on arrival police informed them that the person was already dead. He too never witnessed the attack and the deceased never spoke.

3. CPL DAVID MUTAI (PW3) confirmed that **JOHN ELIMINIM** reported to police about a body which was lying behind **WHITE CASTLE HOTEL**. Police proceeded there and found a body in a pool of blood with injuries on the back, the head, neck and throat. The suspect was traced and later taken by members of the public to the police station. The reportee one **JOHN ELIMINIM** mentioned the name “**Adventure**” as the suspect.

4. PC ANGAYA (PW4) confirmed that the accused was taken to the station by his fellow street urchins who said he was the one who had stabbed the deceased.

A post mortem conducted on the body by **DR NDIANGUI** established that the cause of death was bleeding due to a single stab wound to the left neck.

5. From the evidence presented, none of the witnesses saw the deceased being stabbed – they were each given information by other persons, that the deceased had been stabbed. None of those persons testified in court, indeed one **SILAS CHOGO** who was named as the one who broke the news about the stabbing never testified. Consequently the evidence remained hearsay with not a single witness to conclusively state that indeed it was the accused who inflicted the injuries on the deceased.

There is therefore no case made out to warrant placing him on his defence and I return a finding of **NOT GUILTY** under **Section 306 (1)** of the Criminal Procedure Code. The accused shall be set at liberty forthwith unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at **ELDORET** this 3rd day of **October** 2018.

H. A. OMONDI

JUDGE