



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 4 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JAMES ITIRIANIACCUSED

JUDGMENT

JAMES EKAI ITIRANI 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 night of 10th and 11th January, at unknown time at Karuma area in Uasin Gishu district within Rift Valley province the accused murdered *Peter Elar Eregai*.

The prosecution case is that the deceased in this matter, one *Peter Elar Eregai* was a cousin to PW-1. The deceased requested PW-1 to find him a job. PW-1 was working at Lai farm as a watch man. He managed to secure a job for the deceased also as a watchman at the place. The deceased however after sometime complained that he was feeling very cold at night. PW-1 took him to a person called *Jackson Kamreng* who employed him to herd the sheep. The accused person was later employed at the place to look after the cows and to milk them. The deceased and the accused lived in the same house but in different rooms. The accused had sold a bicycle to the deceased at 3,000/-. On 8th January, 2011 at about 5.00 p.m the deceased went to where PW-1 was working. He told PW-1 that he wished travel home at Turkana. PW-1 expressed wish to send him to his relatives there. However, the deceased said he'll travel after the accused issued him with a receipt for the purchase of the bicycle. Since that day PW-1 did not see him again alive.

On 11th January 2011 the accused went to see PW-1 at 6.00 p.m on his way to collect his phone. They greeted each other and PW-1 asked him where the deceased was. The accused said he went to look for a job elsewhere. The accused was on that day riding on the bicycle he had sold to the deceased. He alleged to had given the deceased 400/-. PW-1 asked him how comes he was riding the bicycle he had sold to the deceased and he said he had refunded him the purchase price.

On 15th January, 2011 PW-4 who is a farmer at Lai farm was informed by his son namely *Bruce Kipkemboi* and a neighbour's son called *Hillary Seronei* that they had found a burnt body in the farm. PW-4 called the area chief one *Chesire Kiruch*. They went to the scene where there were many people. It was in the farm of *Murei*. He as well informed the farm owner. *Johnson Murei*, the farm owner reported to the police at Moiben Police station. PW-7 and another officer known as *Sergeant Benjina* proceeded to the scene. The body was hidden in a cave. Darkness had fallen and they went back. The following morning, they went back to the scene in company of the OCS. The body had been burnt using maize cobs and was in a bad shape. *Johnson Murei* was also there. He told police *Peter Eregai* had mysteriously disappeared and was living in the same house with the accused. He identified the body through the clothes as that of *Peter Eregai*.

The police were led to the house where the two were living. They entered and found blood splattered on the wall and on the floor. The floor was not cemented and there was an attempt to smear the floor with raw cow dung. *Mr. Murei* told the police that the night the deceased disappeared, the accused had gone to his house and informed him that the deceased had secured another job at Nziwa and he had lent him Kshs. 1000/- for use as transport. The police recovered a panga in the house and collected blood samples on the floor and wall. The accused was with them as they did so. He was arrested and taken to Karuna police post. His blood sample was taken as well as that of the deceased. Exhibit memo form was prepared and they were forwarded to the Government chemist.

PW-6 examined the samples. Item A was blood sample of the accused. Item B was blood sample of the deceased. Item C was soil from the scene and Item D the panga. He was to ascertain whether there was any relationship between the blood stains on the soil and panga with the blood of the deceased and the suspect. He found that the blood sample of the suspect (Item A) was of group O while of deceased was group B. The soil (item C) and the panga (Item D) were stained with human blood of group B. They matched the blood of the deceased.

PW5, the scene of crime officer had visited the scene on 16th January, 2011. He found the body buried in dry sand bed. It had been burnt. He took several photographs of it. They then proceeded to the deceased's house which bordered that of the accused. It was a semi-permanent building which was partitioned. They lived in separate rooms. Inside the accused's room there were blood stains on the floor although it appeared cleaned. He took photographs of the building and inside where there were blood stains. A bicycle was availed by the

investigating officer of which he as well photographed. He took 20 photographs in total. He produced them as exhibits.

PW2 carried out mental assessment of the accused and found that he was of sound mind, capable of taking plea.

PW3 carried out the autopsy on the body of *Peter Elar Eregai* on 20th January, 2010. The body had been burnt beyond recognition. It was burnt completely especially the front side, exposing the abdominal organs. Both upper limbs were missing. There was a cut wound on the left cheek measuring 13 x 6 cms. There was a remnant of a rope found around the neck, causing bruising around the neck. On dissection, there was no soot within the trachea and the lungs. A big part of the skull was missing and brain was exposed. Internal organs were burnt. He formed an opinion that the cause of death was due to lack of oxygen due to ligature (rope) strangulations, which then followed by burning of the body. He obtained blood samples and handed it to the investigating officer. He then issued burial permit No. 152126.

The accused was then charged with the offence.

The accused gave sworn testimony in his defence which is that he lives in Moiben and is a farmer. He, together with the deceased were from Lodwar and were working for *Johnshon Murei*. The deceased was looking after the cattle while the accused was supplying milk. They were 10 employees in the farm and each had his own room. The accused got married and the employer told him he did not want him to live there with his wife. He then shifted to the centre. The accused had a bicycle for the employer of which he was using to ferry milk.

On the material day the deceased, who is an uncle to the accused drove the cows back home at 4.00 p.m. He left and informed the accused to take care of the animals. The accused was there with the animals till 7.00 p.m when the watchman arrived. He then went to his house. The following morning when he reported on duty he found the cows had not been milked. The deceased was to milk them. The employer asked where the deceased was. The accused said he was not aware. He went to where the deceased was living. He pushed the door and noted there was no one. At 9.00 a.m he returned to where the cows were. The employer asked where the deceased was. The accused said he was not in his house. The accused milked the cows and grazed them. One week passed and the deceased had not been traced. He had no phone. The accused told the employer that probably he went home.

On Sunday at about 2.00 p.m the accused was called by a neighbor known as *Peter Ikwamu*. He told him that someone had died in the farm where they were working. It was a vast farm. They went to the scene with neighbours and the employer. They found the deceased's body. The chief and the village elder arrived. The accused was in shock. The accused asked, "***if the employees are being killed how will life be like?***". The body had decomposed. It had remained there for 2 weeks. The crowd faced the accused when he raised his concern. The employer told the chief that the accused will cause trouble to him. The crowd arrested him and ordered him to sit down. He was asked whether he knew of the suspect and said he did not. He was asked why he made the unpolite comment. He asked them whether they expected him to be happy. The police arrived. The employer told them to take him to the police station. He recorded a statement.

The accused said he had not sold the bicycle to the deceased. The deceased was also using it and it was recovered from his house.

At this point the court must now determine as to whether the offence against the accused is proved by the prosecution beyond reasonable doubt.

The available evidence leaves no doubt at all that the deceased was murdered. The evidence of PW-3 shows he died out of Asphyxia due to ligature strangulation. There is evidence of effort to conceal the body as it was found extensively charred and hidden in a cliff of rocks. The question which then follows is who murdered the deceased?

There is no direct evidence as to the one who committed the offence. What there is circumstantial evidence. The accused and the deceased were living in the same house but each in his room. The evidence of PW-1 shows that the accused had sold a bicycle to the deceased for 3,000/-. Prior to the time the deceased went missing, he had told PW-1 that he wished to go home in Lodwar but required the receipt for the sale of bicycle first. He wanted to take the said bicycle with him. After he went missing the accused was seen riding on the said bicycle. He was questioned about it by PW-1 and said he refunded the purchase price to the deceased. When he was asked where the deceased was, he said he had gone to look for a job elsewhere, and he had given him 400/-. There is allegation he made a similar claim to the employer. This was not true and he must have lied to conceal the crime. He was the only person living in the same house with the deceased, though in different rooms. There was blood stains on the walls and floor of the deceased's room. A blood stained panga was also there. It appears the deceased was murdered in his room before he was carried away and the body burnt at a distance but within the farm where he, and the accused were working. The only person who had the best opportunity and all the time to do that without easily raising suspicion was the accused person. In his defence he says there were many employees about 10 in the place and were all living in the same place. However prosecution evidence states otherwise and the photo of the house he was living with the deceased does not show of other houses. He never gave details of other employees and why they were not questioned about the missing of the deceased by the employer and the police. He was untruthful and said so to deceive that he was not the only suspect. Likewise he alleged to had shifted to the centre when he got married. He never gave details in whose house he was living and who his wife is. There is no evidence that the police found such a house and searched it. This must as well be a lie. He had a cause or motive to kill the deceased. He alleged the bicycle was brought by the employer. There is evidence he sold it to the deceased who wanted to take it to Lodwar before his death. The accused may have quarreled with him over the sale receipt and may have been killed so as not to take the bicycle away, of which would have made the employer realize he had illegally sold it to the deceased.

These circumstances when weighed together, do satisfy the three test laid in the case of ***Abanga alias Onyango –vs- Republic Crim. Appeal Number 32 of 1990 (UR)*** in that;

1. The circumstances from which an inference of guilt is drawn, is cogently and firmly established.
2. The circumstances are of definite tendency, merringly pointing towards guilt of the accused.

3. The circumstances taken circumstantively, forms a chain so complete that there is no escape from the conclusion that within all human probability the offence was committed by the accused and none else.

The prosecution case justifies the inference of guilt to the accused in that the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other hypothesis than that of his guilt (**Republic –vs- Kipkering Arap Koske and Another 16 EACA 135**).

I therefore find the offence against the accused proved by the prosecution beyond reasonable doubt. He is accordingly convicted of the offence of murder contrary to Section 203 as read with *Section 204* of the Penal Code.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 13th day of November, 2018.

In the presence of:-

1. Mr. Chemoyai for the accused
2. Ms Mumu for State
3. Ms Anne - Court assistant