



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**CRIMINAL CASE (MURDER) NO. 34 OF 2015**  
**(Formerly Nakuru Criminal Case (Murder) No. 27 of 2012)**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**SIMON ROKONKO SONKOK.....ACCUSED**

**J U D G M E N T**

1. The Accused was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. In that on the 5<sup>th</sup> day of April, 2012 at Olchoro Village area in Narok County, he murdered **Katapila Ntimama**.
2. The prosecution case was that the deceased, Katapila Ntimama, was among revelers, including **Julius Kimomoi** (PW1) and **Samuel Masikonde** (PW3) who were at a bar at Olchoro on the night of the 5<sup>th</sup> April 2014. They were taking alcohol while watching a video. As the night wore on, a group of men got up to dance close to the counter of the bar. It appears that the deceased who had been seated joined the dancing at some point, before sitting down again.
3. However, when the deceased got back to the dance floor, he pushed the Accused, who reacted by flushing out a *simi* and striking the deceased on the head. The deceased fell down and died on the spot, even as the accused fled the bar and revelers dispersed. The local chief mobilized police officers and civilians to search for the Accused who was traced in his home and arrested. The murder weapon was retrieved from him.
4. **Dr. Ngulungu (PW7)** conducted a post mortem on the deceased and concluded that death was caused by a skull fracture and laceration of the brain, with haemorrhage.
5. The Accused, when placed on his defence, elected to give a sworn statement. To the effect that, he knew the deceased well and had never quarreled with him. Regarding the murder he said he did not recall what happened or circumstances of the murder of the deceased except that he had his own knife. In cross-examination he admitted that he visited the bar in question on the material date, but that he had no reason to kill the deceased.
6. There is no dispute regarding the death of the deceased at the bar on the material date. Unchallenged

medical evidence tendered through **PW7** indicated that the cause of death was a skull fracture and brain laceration, inflicted by a sharp object.

7. The sticking point in this case was the identity of the assailant. On this score, the prosecution relied on the evidence of **PW1** and **PW3** who were with deceased at the time of the attack. Apparently, the deceased had arrived at the bar earlier than both witnesses. **PW1** stated in his evidence that:-

**“On 5/4/2012 at 10.00pm I was seated in a bar with the deceased katapila and others. We were drinking alcohol. A young man came in and he had a knife which was bent. He cut the deceased and left. He was not in the bar before. I had been with deceased since 7.00pm all along I had not seen eth young assailant..... I did not see the assailant enter but the deceased fell down and I looked to see assailant leaving. It took one minute.”**

8. The witness proceeded to state that he knew the Accused as a neighbor. During cross-examination he denied that he and the deceased were drunk. He described the dimension of the bar as a small room of about 3 metres wide and said that the room was lit by 3 strong bulbs and that there were about 10 people at the time.

9. For his part **PW3** stated:-

**“I was present in the bar with many others revelers. I knew some ..... Including PW1. In the bar I sat drinking. At about 10.00pm the deceased was at the bar. I arrived at bar at 8.00pm. At about 10.00pm I was not very drunk. Then we were watching television. There was a disco. Deceased was drinking in the place with others..... Then the deceased got up and pushed the Accused aside. They did not speak. Instead the Accused flushed out and slashed him, leaving the bar without speaking. I had found the Accused and deceased already in the bar. The deceased had sat a short distance away from us but on the same side but eh young men and others were in the middle floor dancing. When cut once the deceased fell..... The incident occurred among the dancers.”**

10. The witness confirmed in cross-examination that he knew the Accused and his family. Although he stated that there were many people present, he did not estimate the number. But he stated that the bar was a single room 2m x 3m and that the dancing took place close to the counter. He reiterated the pushing incident when the deceased got on the floor leaving his seat close to the witness. Stating that the deceased and Accused were drunk, he said that no other person was injured when the deceased was slashed despite the presence of other dancers on the floor.

11. From the accounts given by **PW1** and **PW3**, as well as the Accused's own statement in cross-examination, the Accused was at the bar in question on the material night. **PW1** and **PW3** maintained despite minor discrepancies in their accounts, that the Accused whom they knew well slashed the deceased, according to **PW3**, after the deceased pushed the Accused person on the dancing floor. The two witnesses described the room as small but having a counter, dancing floor (area) and seating space. According to **PW1** the room was illuminated by 3 lights bulbs enabling visibility.

12. Possibly, these witnesses, like the deceased may have been tipsy, but their testimony, especially **PW2's** was consistent on substance even during cross-examination. Much was made of the recovery of the alleged murder weapon with the Accused, shortly thereafter but I do not believe that **PW1** and **PW3** had opportunity to identify it in the attack. Besides, no forensic tests were conducted to connect the said weapon with the murder. Equally, the fact that the accused refused to open the door when police went to his home, and instead armed himself, adds little value to the prosecution evidence.

13. However, words he uttered in the hearing of **PW2** when after arrest he was driven back to the centre confirm the evidence of **PW1** and **PW3**. **PW2**, did not witness the incident and only assisted in tracing and arresting the Accused. The Accused's father according to this witness followed the Accused to the centre. There the Accused told his father that: **“The worst has happened, I killed the man.”** **PW2**, while admitting that he belonged to the family of the deceased denied that he and others made up false evidence

against the Accused.

14. The Accused's defence taken in totality appeared to be an admission to have been in the bar where the killing occurred, drunk alcohol but did not know what happened. That after he entered the bar, he left early to go home. He admitted seeing **PW3** on the said occasion.

15. From the defence, it was not clear whether the Accused was setting up a defence of intoxication. However he stated that he had no reason to kill the deceased with whom he had a good relationship. The conditions in which a defence of intoxication can be sustained are set out in Section 13 of the Penal Code which states:

**“(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.**

**(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-**

**(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or**

**(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.**

**(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code (Cap. 75) relating to insanity shall apply.**

**(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.**

**(5) For the purpose of this section, “intoxication” includes a state produced by narcotics or drugs.”**

16. The prosecution evidence when considered as a whole leaves no doubt that the Accused did, after a confrontation with the deceased, strike him dead with a weapon, no doubt a sharp one. However reviewing the circumstances obtaining at the time of the offence, it does appear that the Accused and the deceased were both drunk. The killing appeared impulsive and unpremeditated. The fact that the Accused had a weapon with him in the bar does not mean he intended to harm the deceased in particular, as it was generally agreed by prosecution witnesses **PW1 – 3** that it is usual for Maasai men to carry arms with them.

17. In my considered view the evidence tendered before the court is consistent with an offence of manslaughter Contrary to Section 202 of the Penal Code as the circumstances appear to negate an intention on the part of the Accused to murder the deceased. I will therefore enter a conviction against the Accused for the lesser charge of Manslaughter Contrary to Section 202 which I am satisfied has been proven against the Accused beyond reasonable doubt.

Delivered and signed in Narok this **1<sup>st</sup>** day of **July, 2016**.

In the presence of:-

For the DPP : Mr. Koima

For the Accused : Mr. Mburu

Accused : Present

CC : Barasa

**C. MEOLI**

**JUGDE**