



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATES COURT AT KITALE

CRIMINAL CASE NO. 51 OF 2011

REPUBLIC..... PROSECUTOR

VERSUS

LONGWEE ANG'ATANG'IRO..... 1ST ACCUSED

KAMAMA APOLONYANG..... 2ND ACCUSED

J U D G M E N T

1. The charge against the two accused i.e. **Longwee Ang'atang'iro** and **Kamama Apolonyang**, is of murder, contrary to Section 203 read with Section 204 of the Penal Code, in that on the 30th August, 2011, at Kimpur Village Alale Location West Pokot County, with others not before court murdered **Loitamichir Loru**.

2. The case for the prosecution was that on the material date, the deceased was at his home together with his family who included a son **Ngura Lotukei (PW1)**, when a group of five people including the first and second accused went there while armed with spears, bows and arrows. They dragged the deceased into a bush while beating him. His dead body was found in the bush a day or two after being taken away from his house.

3. **Peter Tekoo Angatangi (PW2)**, a brother to the deceased, was informed by the wife to the deceased, **Monicah Mapeyok (PW4)**, that the deceased had been attacked and taken away by five people. He (PW2) reported the matter to the police.

Monicah (PW4) indicated that the deceased had been attacked and taken away by the two accused and three other persons.

4. **Lopuel Longorio (PW3)**, also a son to the deceased, left home on the material date at about 6.00 am and on his return at midday found nobody in the home. He learnt from neighbours that his father had been attacked and taken away by a group of people. He went in search for his father but in vain. He learnt on the following day that the dead body of his father was found in a forest while naked and with injuries.

5. **P.C. Chrispinus Alwany (PW5)**, was on duty at Alale Police Post on the material date when he received a report that the deceased was taken away from home by his three brothers but could not be traced. That, the dead body of the deceased was later found in a bush after a search for him was

mounted. He (PW5) visited the scene where the body was found and caused it to be removed to the mortuary. He said that the body of the deceased had a deep cut probably caused by a spear. He later learnt that the two accused were younger brothers of the deceased and that they were suspected of having killed him.

6. P.C. Alwany (PW5) arrested the two accused after they had disappeared for a while. He said that they were the last people seen with the deceased when he was alive. **Makari Michael (PW6)**, produced a post-mortem report (P. Exhibit 2(b) showing that the deceased died from suffocation and hemorrhage leading to respiratory cardiac arrest. He (PW6) was at the time a clinical officer based at Kacheliba Hospital.

7. The case for the defence was that none of the two accused committed the alleged offence.

Both accused indicated that they were on the material date called by the deceased to his home to discuss the return of cattle paid to their parents as dowry. They were five brothers at the time. They quarrelled during the discussions. Thereafter, the five brothers went to their in-laws, to collect the cattle and were told to return on the following day. They left for their home but passed through a trading centre.

8. Accused one (Longwee) said that he left the trading centre and went to his mother's farm from where he was apprehended and taken to Kacheliba Police Station. Accused two (Kamama) left the centre and proceeded to a hospital to see his child and pay for the medical bills. He then went home but on the following day proceeded to Uganda after he was informed that his cattle which had been taken there for grazing had been stolen. He later learnt that the deceased, his eldest brother, had been found dead after disappearing from home for a while.

9. The second accused returned home from Uganda after receiving the sad news. He learnt that his cattle had been seized after the death of his brother. The situation became unruly when villagers arrived at the scene. The police were called and he was arrested only to be later charged with the present offence which he did not commit.

10. From all the foregoing evidence, it is apparent that prior to his death, the deceased was reluctantly and forcefully removed from his home by his own relatives who included the two accused. Evidence from the deceased's wife (PW4) and son (PW1) placed the two accused at the scene at the time the deceased was allegedly dragged and taken away into a bush. It was indicated that in the process of being taken away the deceased was beaten up and that those who took him were armed with spears, bows and arrows.

11. The two accused did not deny having come into contact with the deceased on that material date. They indicated that he had called them to his home to discuss a matter to do with some dowry. They also indicated that they also left for the home of their in-laws in the company of the deceased with whom they passed at the local trading centre after coming from their in-law's home. They in essence implied that they had nothing to do with the death of the deceased but acknowledged that the discussions at the home of the deceased degenerated into a quarrel among the five brothers.

12. The fact that the deceased was found dead a few hours after having being forcefully removed from his home and also having quarrelled with his brothers including the two accused was sufficient enough to suspect the two accused's involvement in his death. Indeed, there was no denial that the deceased was assaulted by those who took him away. However, there was insufficient or no evidence at all showing that the deceased was assaulted by the two accused and others to the point of sustaining fatal injuries or otherwise.

13. It was even not made clear by the deceased's wife (PW4) and son (PW1) as to who among the five people assaulted the deceased. The two accused's participation in the alleged assault was not established and even if it was established there was no proof that the deceased died from injuries occasioned to him by the two accused or any other person.

14. The evidence by the clinical officer (PW6) who carried out a post-mortem on the body of the deceased indicated that the body had a deep penetrating wound on the neck and that the cause of death was suffocation and hemorrhage which led to respiratory cardiac arrest. There was no mention of what may have caused the wound and indeed the death of the deceased. The Investigating Officer (PW5) opined that the wound may have been caused by a sharp object such as a spear.

15. However, no spear was recovered from any of the accused and the evidence of the clinical officer regarding the cause of death appeared contradictory and incomplete. He mentioned the deep penetrating wound on the neck but did not reflect the same as part of the internal injuries on the body of the deceased. Being a clinical officer and not a pathologist doctor, his competence in carrying out the post-mortem was doubtful.

16. Suffice to say that there was no evidence by the prosecution showing and establishing beyond reasonable doubt that the death of the deceased was as a result of a criminal and unlawful act against him by the two accused or any other of them.

The possibility that the deceased may have been killed by wild animals could not be overruled in view of the evidence that after being taken away from home for a day or two his dead body was found in a bush or forest infested with wild animals such as leopards and lions.

17. On the evidence, it cannot be said with certainty that the animals are guilty of the death of the deceased, neither can it be said as such with regard to the two accused. The prosecution did not discharge its burden of proving the guilt of the two Accused beyond reasonable doubt. The two must and are hereby found not guilty as charged and are acquitted accordingly.

J.R. KARANJA

JUDGE

2/6/2015

[Delivered/signed this 2nd day of June, 2015].