



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO.21 OF 2012

REPUBLICAPPLICANT

VERSUS

VINCENT ISWAT EKASIBARESPONDENT

J U D G M E N T

1. The death of Deogracious Ania (Deceased) occurred on 2nd December 2012 at Apegei Village of Chakol Division of Busia County. The Accused is blamed for that Death and is charged with Murder contrary to Section 203 as read with Section 204 of The Penal Code.
2. The hearing of the Prosecution witnesses was fast and short. Hearing commenced on 5th February 2014 when three witnesses were heard. Hearing was then adjourned to 4th June 2014 when the Prosecution's final two witnesses testified. The Defence was heard on the following day.
3. John Odima Akure (PW1) is a resident of Apegei location. On 1st December 2012, he attended a fundraising meeting at the home of Alex Ania. That fundraiser was followed by a dance which went into the early hours of the morning. At around 4.00a.m, the witness heard noises from a nearby cassava plantation. Some girls emerged running from the plantation into a tent which had been pitched in the compound of the host. He was able to recognize one girl by the name Yaya.
4. The Deceased who was a "bouncer" at the dance would have been concerned about this commotion. A bouncer is now accepted as a regular English word to refer to "a person employed by a nightclub, bar or pub to prevent troublemakers entering or to eject them from the premises" (concise for an English Dictionary 12th Edition). He approached the girls to find out what had happened. The girls, it is said, told the Deceased, that some four boys had tried to rape them. These were a Moses, Emuje Emuje, a brother of Moses and Vincent. Vincent is the Accused. It was the evidence of PW1 that, the four boys, apparently upset by the intervention of the Deceased, threatened to beat up the Accused. That in fact Moses held the Deceased by his shirt.
5. Later, PW1 heard some noises from the road. He walked to the direction of the noises and saw Moses Ekarot holding a wooden plank. As Moses saw him approach, he run away. Lying at the place he had seen Moses was the Deceased. Suddenly Emuje Emuje hit PW1 on his head. This caused him to lose consciousness.
6. On coming round, the witness returned to the home of Alex Ania where he asked the people there to check on the Deceased. They were unable to find the Deceased and PW1 had to show them the scene. They found the Deceased bleeding from the mouth and nose. One of them thought that the Deceased had actually passed on.
7. John Oware Ania (PW3) is the father of the Deceased. He received the information about the Death of his son from PW1. It was his evidence that PW1 told him that his son had been killed by Vincent Iswat (the Accused). He and one Nicholas Emukulet Karani (PW2) were later, on 5th December 2012, to attend the postmortem of the Deceased conducted by Dr Patson Kubuta (PW 4). They identified the body to the Doctor.

8. PW4, whose task was to ascertain the cause of the death of the Deceased, conducted the postmortem on 5th December 2012. On the External Appearance, he observed:-
 - a. Bruises on submental area (chin)
 - b. Indurated chest (Depression of the chest)
 - c. Obvious fracture to the sternum
 - d. Inflammatory swelling on the right mandibular area

The significant observations on the Internal Appearance of the body were:-

- a. The lungs were partially collapsed with features of haemothorax (blood) around the pleural space.
- b. The spleen was extensively ruptured and there was extensive free blood in the abdomen.
- c. Bruises on the submental area and inflammatory swelling on the right submandibular area.

The Doctor thought that the blow or blows were heavy because they had ruptured an internal organ (the spleen). The Doctor formed the opinion that the cause of death was hypovolaemic shock due to internal bleeding.

9. Although Cpl Erick Kasamba (PW5) was the Investigating Officer, his role was limited. On 2nd December 2012, he proceeded to the scene of Murder and removed the body of the Deceased to Alupe Sub District Hospital. As he returned to the Police Station, he was informed by the Chief of Apegei location, through telephone, that a suspect in respect of the Murder had been arrested by Members of the Public. He re-arrested the suspect and escorted him to Adungosi Police Station. That suspect is the Accused. He preferred charges against the Accused after recording statements from witnesses.
10. In his short Defence, made by way of a sworn statement, the Accused confirms that he attended the Harambee at the home of Alex Ania. That he went there at 4.00p.m and left at about 11.00p.m as the function was still underway. He left for his home at Apegei. He reached there at about 11.30p.m. He says that he slept at midnight and woke up at 06.00a.m on the following morning. He denies the charges and was surprised when he was arrested by the Police at 10.00am and questioned about the death of the Deceased.
11. PW1 was the star witness for the Prosecution, yet his evidence does not substantially implicate the accused. Whilst he testified that the accused was among the 4 boys who it had been said had attempted to rape some girls, he never saw the accused confront or assault the Deceased. When the witness saw the Deceased lie on the ground and needing help, he saw only two people at the scene. These were Moses Ekarot who was armed with a wooden plank and Emuje Emuje who hit the witness. He never saw the Accused.
12. This may explain, why at the time of making his statement to the Police, PW1 never mentioned the Accused as one of the assailants. PW5 further told Court that even another witness (Shadrack Okomol), who had died before he testified, never named the Accused as one of the suspects. Those implicated were Ofula, Emuje Emuje and Ekarot. PW5's evidence was that these suspects escaped to Uganda and are still at large. Facing a barrage of questions in cross-examination, PW5 conceded that the Accused was not arrested as a result of any investigations. That he was re-arrested after his first arrest by Members of the Public. The Investigating Officer further conceded that the Accused was facing charges on speculation and suspicion. PW5 did not seem to faith on the strength of his own case.
13. Just like the Investigating officer, this Court finds that no evidence implicates the Accused. The Prosecution has failed to prove its case at all and this Court must acquit the Accused. He is free to go unless detained for some other lawful reason.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 14TH DAY OF JULY 2014.

IN THE PRESENCE OF:

KADENYI.....COURT CLERK

.....FOR STATE

ONSONGO HOLDING BRIEF FOR MIANO FOR ACCUSED