



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL CASE NO.44 OF 1991

**TOM PIEMO
OMBURA
.....)**

**SHIKUDHANI
AJWANG
RUMAYA
.....
ACCUSED**

VERSUS

**REPUBLIC
.....
.....
.....
PROSECUTOR**

J U D G M E N T

Tom Piemo Ombura and Shikudhani Ajwang the 1st and 2nd accused are jointly charged with murder C/S 203 and 204 of the Penal Code. The particulars are that on the 15th of November, 1990 at Njiru Village in Embakasi within Nairobi Area, they jointly murdered Loiyangomoy Lothirim Alila.

The deceased with his friend James Ichoicha were returning home from a drinking spree. The date was 15/11/190 and the time about 11 p.m. they were suddenly set upon by a group of three who beat the deceased unconscious. They stubbed him well. It was a moonlight night and two of these attackers who disappeared when they heard someone noises, were known to Ichoicha PW1 before this date. PW1 saw them and he recognized them. Police were later called to the scene but it was too late for them to help the deceased. He had either died or died very shortly after their arrival. A Post-mortem examination was performed on the body of the deceased and he was found to have been a male African aged about 36 years. He had a deep wound on left side of the stomach 4cm/2cm/6cm and the case of death was found to be massive Haemopertitoneum due to rupture of the Spleen and Pancreas consistent with a sharp object. Murder it was the Post-mortem confirmed it.

The same night of the attach, Ichoicha PWI, led the Police Officers to one house in the vicinity to which one person was arrested – the 1st accused PW1 said that this was one of the attackers. Later that morning

he identified another one at the Police Station – accused number 2 whom he said was another of the attackers. He said these two known to him before the date of the attack. The two were finally charged with the murder of the deceased. The two gave evidence in the defence. They denied completely having anything to do with the murder. Accused 2 said he was at the scene with accused No.1 at the time of the fight. He called it a fight. Accused 1 was fighting three people and he was trying to persuade them to stop. They didn't. At the end of it accused 1 ran off and later accused 2 followed him to his house and asked him why he had to leave him behind. Accused 1 answered to tell him the reason the next day. Accused 2 otherwise says he is innocent of the charge. It was nighttime – 11 p.m. Inchoicho says there was moonlight and he could see the attackers quite well. He knew the two before. Recognition is different from identification but still it would be rampant with sequence if the conditions are not conducive to proper identification. The point here is that PWI led police to house of accused 1 the same night and pointed out the 1st accused. It is not corroborated but it is consistency of the P.W.1's evidence to this effect and his doing so from the witness box corroborate P.W.1's evidence with respect to accused No.1. It is however very weak corroboration or evidence that cannot be acted upon on its own to find conviction. It doesn't however, stand alone. There is the evidence of P.W.1 of recognition, which I acc find that p.w.1 was mistaken in his recognition. The result is that I find the two accused to have been at the scene on the night of the incident. Inchoicho doesn't say that he was in a group of three fighting accused 1 while accused 2 looked on and I do not believe this from accused 2. Whatever the accused and their friend who was never found intended to do. I find that they were both present and taking part in the fight. It was most likely an intention to hit in which they were ready to use force if it became necessary – a common intention and so the act of one was the act of the whole group. They used excessive force and killed one of the victim.

I agree with the assessor in their verdict. Mine in also murder. I commite each of the accused as charged.
Coram: Mango (J)

Miss Munga for State

Both accused – Mrs Matesi for both

MUNGA: 1st offender.

Mrs Matesi: Nothing to say.

J. MANGO

JUDGE

Court: Each Sentenced to die in a manner authorized by the law.

J. MANGO

JUDGE

13/10/1992

M/S Twayler Matasi

Please pay as claimed amended Shs.2640/=

Date 4/11/1992