

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO 54 OF 1987

TEIPON..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

November 2, 1987 **Patel J** delivered the following Judgment.

The accused is charged for murder. It is alleged that on September 22, 1986, at Siteti area, in Narok District, the accused jointly with others not before court murdered Michael Arap Samoei.

The evidence of Angelina (PW 1), is that at around 10.00 pm some eighteen people broke into the house she was in with her husband, the deceased.

There were three other visitors in the house with them. She was sleeping and had covered herself with a blanket up to her head. Upon hearing a band, she threw away the blanket away and claims to have recognized the accused amongst those eighteen or so people, The thugs attacked her husband and the three other visitors and killed all of them using knives.

Agnes (PW 2) and Sarah were sleeping in a house about twenty feet away from where the four people were murdered. According to them some five people broke into the room they were sleeping in that night and asked them to give them money. The accused was not amongst those five. However, Agnes claims that she heard the voice of the accused outside the house that night.

In his defence, the accused said that he went to his house drunk at about 7.00 pm on the day in question and he went to bed straight away. He added that his wife (DW 1), tried to wake him up so that he could eat his meal but he refused. He added that at around 1.00 am his friend called Ole Lisha went to the house and woke them up asking if they had heard any screams.

They went out. Heard no screams. The accused went back to sleep. His evidence received support from his wife.

I do not put any reliance on the evidence of Agnes (PW 2), who said that she heard the voice of the accused outside her house that night. She did say what the accused was saying. The accused is a Maasai and Agnes is a Nandi. She admitted that she did not understand Maasai language. Even those who entered into the house were talking in Maasai language and she was not able to understand what they said. The evidence of Sarah does not connect the accused with the case, except that according to her, the accused had once asked her husband to move out from the shamba they were occupying.

I now turn to the evidence of Angelina. She claims to have identified the accused before the accused hit the lamb in the room. She said it was a small room they were in. It was in the light of a small tin lamp, that she recognized the accused whom she had known before. The assessors are of the view that her evidence is not so sound as to be relied upon. They feel that she may have made an error. In their opinion, the accused is entitled to acquittal. Although Angelina had known the accused prior to the incident, it is clear from the evidence that they are not close neighbours. The accused lives across the river. There is no

evidence that the accused was socializing with the deceased and his family prior to the incident. The room in which Angelina was that night was a small one and the thugs must have rushed into the room as soon as they broke the door open. The lamp was put off soon after they got into the room. In these circumstances it is not possible to say Angelina had sufficient enough time to see any of the thugs. The circumstances for identification were unfavourable because the thugs rushed into the room suddenly. The light in the room would not be bright enough in that it was only a small tin lamp which was burning in the room. The possibility that Angelina made a great error in saying that the person she saw was the accused cannot be ruled out. For these reasons, I find that the charge is not proved beyond a reasonable doubt. The assessors are of the same view and with respect, I agree with them.

In result, I dismiss the charge and acquit the accused.

November 2, 1987

PATEL

JUDGE