



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Case 50 of 2001

REPUBLIC.....PROSECUTOR

=VERSUS=

PETER (PAUL) EREKAI.....ACCUSED

JUDGEMENT

The Accused, Peter Paul Ereikai was charged with the offence of murder contrary to the Provisions of Section 203 as read together with section 204 of the Penal Code. It was alleged that on the 1st day of May, 1998 at Tarakwa Farm within Uasin Gishu District of the Rift Valley Province murdered JAMES EKULE ERKWA. The accused was arraigned in Court on 17th October, 2001 when he pleaded not guilty. He allegedly had escaped from lawful custody after arrest shortly after the incident.

The Prosecution called 9 witnesses. The Accused was placed on his defence and gave an unsworn statement. Before the trial was concluded, the law relating to assessors was changed so that it was now possible to proceed without assessors in murder trials. There was no summing up in this case.

P.W.1, Francis Abdullahi Kiptoo, a retired Chief stated that on 1st May, 1998, some people went to him and told him that some people had fought and one had been cut near the chest and was in critical Condition. He collected two Administration Police Officers and directed them to go to the scene and arrest the assailant. One of the Administration Policemen was called Sammy Kiptoo while he could not remember the name of the other though he was a Turkana.

The next day, the Chief was told that the injured man had died. He died in farm belonging to one Kipriptoo. The suspect was arrested. His name was Paul Ereikai while the deceased was James Ekule. The Administration Police arrested the suspect with his colleague one Isaac Ekeno. The Chief was told that Sammy Kiptoo went to look for the weapons allegedly used, however when he came back, the suspect had escaped.

The Chief reported the matter to the Police Station after which the body was taken away. The Chief identified the accused in Court.

P.W.2 was one Joseph Chemweno Chemitei, a farmer. He did not witness the incident. He said that he was aware of a problem between the accused, the deceased and a third Turkana man. They were all Turkana and lived together. He said that they had quarreled over a woman. However, he had never seen them fight.

P.W.3 was called William Lopiyo. He said that on 1st May, 1998, at about 7.30 p.m. his children came to him and told him that some people had **“killed each other”** at a neighbour’s place. He went to the place with two other neighbours, Thomas Ekitela and Chesire Kiprono. They found the deceased lying on the ground. He was bleeding on the head but still alive. There were no other people at the scene. The witness said that he knew the victim as one James Erupe. They tried to help him. They carried him but he became heavy. They laid him down at the farm of one Chesire Kiprono. Thomas was sent to call the Police while Chesire and the witness went to look for a car. A report was made to Tarakwa Police Station. They had left the victim unattended. When they returned, he had died. They kept the body in the compound of Mr. Chesire. The body was collected by the Police the next day.

P.W.4, one Thomas Ekitale testified that on 1st May, 1998, he was at the farm of Mr. Maina. He had heard that some people had killed each other. He went to the scene with one William Etir. The victim was lying on the road. They tried to assist him. He was bleeding and could not talk. They used a torch to look around. They decided to call the police. They tried to carry the deceased with a bicycle but it was of no use. When they went back to the scene, the deceased had died. It had rained during the night.

P.W.5 was Philip Ngulem Ekeno, an uncle to the deceased. He identified the body of the deceased.

P.W.6 was an old man called Reuben Nakulem. He said that on the 1st May, 1998, at about 8.00 a.m., he had gone to drink at Mary Chepkemboi’s house. He saw James Ekule, the deceased with a woman called Esther Ekeno. He was there until 11 am – 12 noon There was no quarrel or fight at the scene. On cross-examination, he said that he had also seen the accused, Paul Eregai. He was with his wife and boss, one Momoyie. They were all drinking changaa. There was no quarrel at the time and everybody was talking nicely to each other.

P.W.7 was one Juma Shikuku- a Police Corporal. On 2nd May, 1998, one Francis Kiptoo came to him and identified himself as a chief. He reported that a murder had taken place within his area. After the incident was recorded, he went with one P.C. Brown Ngala and a driver to Tarakwa Village. The Chief accompanied them. They found a dead body. It was identified as that of one James Ekule.

The body had a wound on the central part of the head. It appeared to have been caused by a sharp object. He came to learn that a suspect called Peter Ereikai had been arrested. The suspect later escaped from the Chief’s Camp. The witness escorted the body to Eldoret District Hospital. The witness did not find the object or weapon used despite a search.

On 14th May, 1998, he went to attend a post mortem examination. The doctor said that the body had decomposed beyond recognition. On 5th March, 2001, the suspect was traced within Moi’s Bridge and arrested by the Police. P.W.7 arrested him.

P.W. 8 was Mary Jepkemboi Rotich. She is a farmer. She remembers that on 1st May 1998 at around 3 p.m., she was at her house in Ziwa. Four people came to her house. She did not know their names. They went to drink changaa which she sold. There were 3 men and one woman. She thought that they were quarrelling as they drank. She did not understand the Turkana language. The quarrel appeared to be between the accused and the woman. She identified the accused in Court. She said that the deceased left and crossed the road. He went to the farm of Maina. Thereafter, the accused and the woman left. She said that the accused went toward the deceased and stabbed him with a knife. She was shocked as she had never seen somebody being stabbed. The witness left her children and ran away. She later returned when the police took her away to write her statement. She said that she saw the accused raise his hand holding a knife. That he stabbed the deceased on the head. It was a short knife. That the accused and the woman ran away. They had drunk one glass of changaa each. From that day, she stopped brewing changaa.

On cross-examination, P.W.8 insisted that she saw the knife used to stab the deceased.

P.W. 9 was a Police Constable Brown Ngala. On 2nd May,1998, he was at Soy Police station. A

report was made at their office by a Chief from Kipsombe Location, one Francis Kiptoo that there had been a murder in his area. The OCS ordered that Corporal Vincent Barasa, and himself go with a vehicle and driver to the scene.

They found a crowd at the scene, surrounding the body. He had been stabbed on top of his head. There were no other injuries. The deceased was dead.

P.W 9 stated that the post-mortem was carried out but he does not remember who the doctor was. This was on 4th May, 1998. However, the body was decomposed. The Post-mortem report was produced under the Provisions of section 33 of the Evidence Act.

I have carefully considered the testimonies of the witnesses, all other evidence, the facts and all circumstances of this case. P.W.8 was the only eye-witness to the attack on the deceased. Earlier she had said that the three men and woman who were all Turkana's seemed to be quarrelling. She did not understand the Turkana language. She said that it appeared that the people quarrelling were the accused and the woman. P.W.6, was at the drinking place. He was there until noon. He saw no quarrel or fight. Everybody talked nicely. P.W.8 did not know the Turkana language and her evidence was contradicted by P.W.6 who was a Turkana himself.

Later she said that she saw the accused stab the deceased. She had not seen any quarrel between the deceased and the accused. It is difficult to understand why the accused could remove a knife and suddenly stab the deceased without any provocation. If he did so, this Court wonders why the P.W.8, a mother with children ran away and was underground for 2 months. She left her children behind. When she was arrested, she was treated as a suspect.

P.W.2 used to give the accused work as a casual. He said that accused was a mature person and not a man prone to fighting.

From the forgoing, I find that P.W.8 is not a very reliable witness. She was not involved in the fight and had no interest in the matters between her customers. She ran away when she saw the attack. She left her children unattended for 2 months. This is not a person whose evidence should be accepted without corroboration. I hold that her evidence needed to be corroborated due to her conduct and character and the absence of any proven motive for the sudden unprovoked brutal attack. It is also noted that the weapon or object used was never found or produced in Court.

The fact that the accused escaped from lawful custody is not proof of any guilt for murder in the circumstances. It is noted that the woman who was with the accused also ran away.

What complicates this case further is that the Post-mortem report was totally useless in terms of evidentiary value. The Post-mortem could not be carried out since the body of the deceased had decomposed beyond post-mortem – i.e Post-mortem could not be carried out. No one came to testify why the Post-mortem was not carried out immediately when the body was taken to the hospital on 2/5/1998. The attempt was made on 14/5/98.

As a result, the court could not be told of the nature of injuries and cause of death. This means that even if the accused did attack the deceased, the prosecution did not prove that the deceased died from injuries or causes resulting from the attack. There was no connection between the attack and the death of the deceased.

As a result of the foregoing, I find that the prosecution has not proven the charge of murder beyond reasonable doubt.

I therefore do hereby find the accused not guilty and he is hereby acquitted of the charge of murder.

The accused shall be released from custody forthwith unless he is otherwise lawfully held.

DATED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF NOVEMBER 2007.

M.K. IBRAHIM,

JUDGE.