



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 68 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT GITONGA.....1ST ACCUSED

JANE KARAMBO.....2ND ACCUSED

JUDGMENT

1. The accused persons Robert Gitonga and Jane Karambo were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the penal code cap 63 Laws of Kenya.
2. Particulars are that Robert Gitonga and Jane Karambo on 17th day of August 2014 at Tumutumu sublocation Kiguru Location within Meru County murdered RM.
3. PW1 testified that A2 was his sister and he did see the dead body of A2's son. He said there was a cut on the cheek and the baby's eyes were gouged out. PW1 said A1 was husband to A2.
4. PW2 Village area got information A2's child had been eaten by a hyena. He proceeded to accused person's house saw the dead body of the child and reported to the chief. He also reported to the major AP camp and remained at the scene. He said the accused persons were not at home but A2 later came in company of the major.
5. PW2 said A2 didn't tell him what had happened. That A2 was taken back to AP Camp and Assistant chief made phone call to police from Maua to come and collect the body. PW2 said they remained at the home overnight until police came to collect the body.
6. PW2 said there was no blood anywhere in the compound or even on the bed where the child lay. PW2 said the neighbours didn't hear anything at accused person home. PW2 said they stay near a park which has hyenas.
7. PW3 Assistant Chief of Kianda Sublocation testified that he was in church on 17.7.2014 when he received phone call from Sub-Area-Mr Mugwika who reported the death of a child. He advised they should report at Tumutumu Ap Camp. When left church he proceeded to the scene and found the dead body of the child, which didn't have eyes and tongue. He called and reported to OCS.
8. That the OCS collected the body the following day. PW3 said that on inquiry he learnt there was a time A1 had said he wanted to sell the child at Kshs 300,000/-. PW3 said accused persons were with the child and they slept in the same house and that is why they are the 1st suspects. He said the sockets of the child's eyes remained empty. He said there was no blood on the bed where the child lay anywhere in the compound.
9. PW3 said that no one witnessed accused persons kill the child. He said A1 was not at home and was not at AP Camp and he was arrested later whereas A2 didn't say anything at the AP camp.
10. PW4 Dr. Wendo Kubai produced postmortem Report filled by Dr. Guantai on 3.9.2014 in which it was established the deceased child died as a result of blunt trauma to the head with a severed tongue –Ex P1. She said there was no indication the child was strangled.
11. PW5 CPL Rose Wanjiru testified on behalf of the initial Investigation Officer P.C. Juma who had proceeded to Wajir on transfer. She narrated the investigations carried out by P.C Juma who their preferred charge of murder against the accused persons. She said it was established accused persons had argued over the sale of the child to make money. She said that during investigations the accused persons were beaming each other. That A2 claimed A1 murdered child when she went to the shop and A1 also claimed he had also gone to the shop.

12. Upon close of prosecutions case the accused persons were placed on defence, and in sworn statement, A1 said he went to the canteen early in the morning and left his wife in the house after giving her money to buy good.

13. That A1 went to buy food at the same canteen and found him there. That A1 left him at the canteen and went back home but after 20 minutes he heard her raise alarm. That he went to the road and saw neighbours responding and by the time he arrived A2 told him he found the child had died and had a bite on the face and eyes had been gouged out. He said he entered the house and saw the child's tongue had been removed. He said there was no sign of what might have happened.

14. He said the body of the child was on the bed but there was no blood on the bed or in the house. He said he went to report of Tumutumu AP Camp in company of A2 and they were placed in the cells.

15. He said that he spent the night in same house with A2 and the deceased as well as 2 other children. He said he loved his child and they lived cordially as a family.

16. A2 also gave sworn statement said that in the morning of 17.8.2014 they woke up and A1 gave her Ksh. 500/- at 7.30pm and he left the house. That she went to the canteen and bought potatoes beans and sugar. That when she returned home she found the other 2 children outside playing. That when she went to wake up the child he found he had been bitten on the cheek and tongue cut and the eyes gouged out. That she started screaming and neighbours came with A1.

17. That she went to AP camp with A1 and they were placed in cells. She denied having sold the child she said she didn't know what happened to the deceased and her neighbours who lived 50 m away didn't witness what happened. She said the child was okay before she went to the shop. She said she didn't look the door.

18. DW3 the father of A1 also testified and said that 1 of accused persons children lived with him whereas accused persons lived with 2 other children together with the deceased. He said accused persons lived cordially. He said he didn't hear that A1 wanted to sell the child.

19. From the evidence on record for the prosecution the issue for determination is whether the deceased died as a result of:-

- a) Commission of an unlawful act and/or omission.
- b) Whether unlawful act was committed by the accused persons
- c) Whether the unlawful act was actuated with malice aforethought

20. It is not in dispute that 4 months old. RM died out of unlawful Act. Dr Guantai in ExP1 – found his eyes orbits were missing and the tongue severed at mid level. The child also had intracerebral haemorrhage due to blunt trauma.

21. The 2 accused persons had spend the night with the child and each claim to have left to go to the canteen and on return found the child dead. According to PW2 and PW3, A2 took herself to the Tumutumu AP camp and was placed in cells and that when she returned to the scene with the Major she was not saying anything. The owner of the canteen which they claim to have gone to didn't come to testify and confirm that indeed both were at the canteen.

22. If it is true that a hyena entered the house after they went to the canteen and bit the 4 month old baby it would have definitely started with the other 2 children who were playing outside and it could not have left the house in such a neat way that there was not even a drop of blood on the floor.

23. The cutting and removal of the child's eye balls and the cutting of cheek to access the child's tongue was done in such a meticulous manner that it can't be said to have been accidental. There is no way the accused persons can feign innocence when they owed a parental duty of care to the child.

24. PW2 and PW3 said A1 was not at home and didn't go to the AP camp. A1's claim that he went with A2 to the Camp and A2's cover up for A1 cannot be excused by this court. The 2 accused persons are found guilty of the murder of the child RM and they are convicted under section 322 C.P.C

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 30TH DAY OF JANUARY 2020.

In the presence of :

C/A: Kinoti :-

Accused 1:- Present in person

Accused 2:- Present in person

Mr Namiti for state

Mr Muthomi Advocate holding brief for Ms Muna Advocate A1 and Mbogo Advocate A2.

State:-

HON A. ONG'INJO

JUDGE

Mr Namiti for state.

We don't have accused person past records.

Order: Mention 20.2.2020 for victim Impact Statement, Mitigation and sentencing.

HON A. ONG'INJO

JUDGE