



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA.**

**CRIMINAL CASE NO. 7 OF 2018.**

**STATE.....PROSECUTOR**

**VERSUS.**

**SIMON WAMALWA SIMIYU.....ACCUSED**

**JUDGMENT.**

The accused is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal code. The particulars of the offence were that; on the 22<sup>nd</sup> February 2018 at Airport trading centre, West Sang'alo Sub-location within Bungoma County murdered **MILDRED WANYONYI**. The case for the prosecution is that on 22.2.2018 **Pw7 MERCY MAKOKHA** who was a student at Sang'alo Institute was at her road when she heard a girl screaming for help, saying that Simon was killing her; in a room neighbouring hers. The accused and the deceased were the ones staying in that room. She telephoned the landlord who came after about 10 minutes. Pw6 Samson Furucha Meshack the land lord received a case from Pw7 who informed her that a student had been killed in his rental premises. He went there and entered the room on which was being occupied by accused and deceased. It was locked from inside. He informed the dean of students who sent a security officer who came with police officers. The house was broken into and on entering they found deceased on the bed unconscious and accused was lying down on the floor and next to him was a blood stained knife. Both the deceased and accused were taken to hospital.

Pw4 SERGENT BENJAMIN WETOI a scene of crime officer produced photographs taken at the scene which he produced as exhibit. Pw1 DR. HARON OMBOGI performed a post mortem on body of deceased and found she had multiple stab wound on the neck, chest and thigh. He found the stab wound at chest lead to injury to the left lung; and to the heart. As a result of the examination he formed opinion that cause of death was due to cardio vascular arrest secondary to a stab wound.

The accused gave sworn statement in his defence. He testified that the deceased was his girlfriend and also a student at Sang'alo Institute. They were staying in the same room. On 22.2.2018 they were in the room when deceased accused him of having another girlfriend. He denied and she started packing her clothes. He went to restrain her from doing so she pushed him and he fell down. She then took a knife and stabbed him on the abdomen. They then started struggling over the knife but she had the knife and stabbed herself. He became unconscious and when he regained consciousness, he found himself in hospital. He stated that they were only two of them in the room and it is not true that he stabbed himself.

There is no doubt that the deceased died from injuries sustained while in the room where they were staying with accused. There were only two of them in the room.

The cause of death is established to be cardiovascular arrest due to penetrating stab wound to the lung and heart. The accused in his evidence admits that they were only two of them in the room. He readily admits that the deceased sustained injuries while in the rooms. He explained that the deceased sustained injuries which she stabbed herself once. She also stabbed him on the abdomen and he became unconscious.

The accused explanation therefore is that through the struggle over a knife. It is deceased who self-inflicted the injuries. The evidence of Pw1 DR. OMBOGI who performed post-mortem on the body of the deceased was that the several multiple stab wounds on the chest, neck, chest and left thigh cannot in any way be consistent with injuries inflicted on self. They are multiple, in several parts of the body, that indicating use of great force, which are consistent to being inflicted by another person other than the deceased.

The accused defence that it is deceased who stabbed herself is not true. As the accused admits that they were only two of them in the room, I am satisfied that the injuries were inflicted by the accused.

The accused in his defence alludes to having been stabbed by the deceased in the abdomen. He denied that he did stab himself in an effort to commit suicide after killing the deceased. Though the accused appeared to have serious injuries, I do not find any evidence that they were indeed inflicted by the deceased and not self-inflicted by the accused.

From consideration of the evidence, it is clear that the deceased and accused had a romantic relationship. They were staying in the same room. A disagreement arose as a result of allegation of infidelity. This disagreement led to the fight where the accused inflicted the injuries and having been that he stabbed deceased to death, he attempted to kill himself by stabbing himself. I am satisfied that this is an offence committed at the spur of the moment and a crime committed at the heat of passion. From the evidence I am satisfied that this is a case where evidence adduced point to an offence of Manslaughter.

I therefore under Section 207 of the Penal Code find accused guilty of the offence of Manslaughter Contrary to Section 202 of the Penal Code and convict him accordingly.

**Dated at Bungoma this 30<sup>th</sup> day of January, 2020**

**S.N RIECHI**

**JUDGE**