



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO. 74 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LG.....ACCUSED**

**JUDGEMENT**

1. **LG** has been charged with the offence of murder contrary to Section 203 as read together with Section 204 of the Penal Code Cap 63 of the Laws of Kenya. The particulars of the offence are that on 3/10/2015 in Tigania West Sub-county within Meru County murdered **NWM**. She pleaded not guilty and the prosecution called 9 witnesses to establish its case.

2. **PW1 GK** testified and told the court that the accused is her daughter. She recalled that on 3/10/2015 she went to Mulika Market at around 8.00 am. She left J, J and W however the accused had not slept home that night. When she returned home at 10.00 am she informed her neighbor Sarah that she had returned. When she entered the house she found W lying in the kitchen and when she tried to wake her up she vomited. She rushed out with the child and asked for assistance from Namoni Karuku who was passing by. At this time the accused was not there and someone was sent to get her from the garden where she had gone to give cattle fodder. The accused was found in the farm together with joy and other children. Later a report was made and the accused was arrested

3. **PW1** did admit to the fact that she had Agrivet in the house which she used for spraying crops. It was wrapped in a paper and she used to hide them in some shelves. **PW1** added that the accused had some behavioral issues and sometimes she would run away from home and at one point she had stolen Ksh. 4,000.

4. **PW2 WJ** aged 11 years told the court that the accused L is his sister. He recalled that on 3/10/2015 their mother **PW1** left them at home. At home they were together with J and W. When the accused came home, W had gone to the neighbor's house, so she went to get W then sent him and joy to get food for the cattle. Before they left the accused had come home with W who was fine and usual. They went and cut grass and went back home and found W sleeping in the kitchen. They went to play with the accused and then their mother came back. She sent her together with joy and the accused for cattle feed. While there the accused told them that she could hear people crying at their home. Soon after they heard Sarah calling them. At home they found many people and later learnt that W had died.

5. **PW3 HJM** in her testimony told the court that she recalled that on 3/10/2015 the accused herein did not sleep at home. When she came she told them that she would drink some medicine. J took out the Agrivet and by this time their mother had left. W was at Romanos house and the accused said she did not want the medicine so J returned it. The accused then sent them to get cattle feed and they left W with the accused. When their mother came home she also asked them to go for more cattle feed and while cutting

grass the accused told them that there would be crying in there house that day and that W would die that day. She said this to her when J had gone to drink water. When Sarah called them and asked them what they had done to the child the accused asked her whether the child was hers.

6. **PW3** added to the fact that she was there when the accused was asked about the Agrivet and she also saw it being removed from the bananas.

7. **PW4 SARAH CIANDIGE** in her testimony told the court that on 3/10/2015 when she heard GK screaming when she got there she found her holding the child and when she touched the child she noticed that the child had died. She however left to go fetch the children from the farm. When she found them she asked what they had done to the child and joy told her that the accused had told her W would die and that there would be many people crying. When they got home the accused was asked many questions but she did not respond. It was only when M came that she showed him where she had hidden the medicine.

8. **PW5 DR BENSON NJUGUNA** was stood down as a witness as he was a dentist and could not present the post mortem report.

9. **PW6 ROBERT MUTWIRI M'MUKIRI** in his testimony told the court that he received a phone call from the accused mother who told him that the accused had given the child medicine. When he got to their home he found people gathered around the accused asking her where she had kept the medicine. When he spoke to her she told him that she would show him where she had kept it which she did. It was a powdery substance in a black paper about 50 grams. He kept it near the fence and waited for the police to come.

10. **PW7 DR. WINNIE MUTUNGA** in her testimony told the court that she is a medical doctor based at Meru Level 5 hospital. She presented the Post Mortem report done by Dr. Paul Wambugu whom she has known and worked with for 2 years. The body was of a female about 3 years. Internally the body was oedematous with air way obstruction, abdominal bloating, swelling, cyarosis with blue colouration of the body. In the digestive system there was Gastral Intestinal Tumor Ulcration in the oral Esophageal, stomach and intestines. There was also brain Oedema with pronounced vascularization evidenced by superficial veins. The cause of death was determined to be Electrolyte imbalance secondary to poisoning.

11. **PW8 P.C DENNIS MWANGI** told the court that on 3/10/2015 he was at Nchuri police station. He accompanied the OCS to Machegene sub location Kithangene village where it was reported by members of the public that NWM was found dead. On inquiry it was established that the accused person was alleged to have poisoned the deceased who was her younger sister. They summoned 5 witnesses to write their statement and managed to recover the alleged poison. The deceased body was taken to Meru level 5 mortuary. On 6/10/15 an autopsy was done and one Mbau was sent by the accused person's mother to witness and identify the body. Samples were taken and forwarded to the government chemist for analysis.

12. According to his investigations **PW8** stated that the accused on that day had asked her mother if she could go visit her grandmother but her mother refused and the next day when her mother left she took the pesticide and gave it to the deceased. When he inquired about the pesticide he established that she had asked Joy to give her the house where the pesticide had been kept.

13. **PW9 STEPHEN MAKINDE JOEL** an assistant government chemist currently the head of toxicology told the court that on 7/10/2015 a police officer Dennis Mwangi submitted some items to the laboratory for examination. The Items were marked Item A- powder substance, B- spoon and Post mortem Specimen. The Post Mortem Specimen as indicated to have originated from the deceased. On examination of the items he detected pesticide known as methomyl in the pesticide substance which is poisonous to humans if ingested. However he did not detect any chemically toxic substances in the Post Mortem Specimen.

14. **A1 LG** told the court that on 3/10/2015 she woke up very angry with her mother as her grandmother had asked her to visit but her mother refused. On the said day her mother left her with her 2 sisters and one brother at home. Her siblings started to remind her how she had been refused to go and see their

grandmother. Her siblings however, left to go to the firm and she remained home with the deceased. It was because she was to take care of her younger sister that her mother refused for her to go to her grandmothers as she was to stay home and take care of her. That is why she decided to poison her. She has since asked for pardon from her mother and she has since forgiven her.

15. The offence of murder is defined under **Section 203** of the **Penal Code** as:-

**“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”**

16. From the definition, four ingredients of the offence arise which the prosecution must prove beyond any reasonable doubt. These are:-

**a. The fact of the death of the deceased.**

**b. The cause of death.**

**c. proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly**

**d. Proof that the said unlawful act or omission was committed with malice aforethought.**

17. On the first and second ingredient PW7 presented the post mortem report that confirmed the death of the deceased and that the death was caused due to Electrolyte imbalance secondary to poisoning.

18. It was then up to the prosecution to prove beyond reasonable doubt that the accused was behind the death of the deceased herein. In **Republic v Ismail Hussein Ibrahim [2018] eKLR** it was held that;

**“To give meaning to this concept of burden of proof of beyond reasonable doubt in criminal cases the Federal Court of United States in the case of United States V Smith, 267 F. 3d 1154, 1161 (D.C. Cir. 2001) (Citing In re Winship, 397 U. S. 358, 370, 90 S. Ct. 1068, 1076 (1970) (Harlan, J., concurring) the court stated:**

**“The burden is upon the state to prove beyond reasonable doubt that the defendant is guilty of the crime charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the defendant’s guilt, but it does not mean that a defendant’s guilt must be proved beyond all possible doubt. A reasonable doubt is a fair, actual and logical doubt based upon reason and common sense. A reasonable doubt may arise either from the evidence or from a lack of evidence. Reasonable doubt exists when you are not firmly convinced of the defendant’s guilt, after you weighed and considered all the evidence. A defendant must not be convicted on suspicion or speculation. It is not enough for the state to show that the defendant is probably guilty. On the other hand, there are very few things in this world that we know with absolute certainty. The state does not have to overcome every possible doubt. The state does not have to overcome every possible doubt. The state must prove each element of the crime by evidence that firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance. If you find there’s a reasonable doubt that the defendant is guilty of the crime, you must give the defendant the benefit of that doubt and find the defendant not guilty of the crime under consideration.”**

19. It was the prosecution case that the accused poisoned the deceased by using Agrivet a common pesticide. On perusal of the witness testimonies PW3 told this court that the accused had told them prior to finding out that the deceased was dead that there would be a lot of crying once they reach home because they would find the deceased had died. Additionally, PW6 managed to recover the said Pesticide after he confronted the accused person and she showed him where she had hidden it and finally the accused in her testimony did indeed admit to having poisoned her sister. This therefore satisfies the 3<sup>rd</sup> ingredient since it has been proved that the deceased met her death as result of an unlawful act of the

accused person.

20. On the final ingredient the accused in her testimony said that on the day of the incident she woke up very angry at her mother because she had refused for her to go and visit her grandmother. The reason she was given was that she was needed home to take care of her younger sibling. It was her reasoning that it was because of the deceased that she was unable to do what she wanted and if the deceased out of the way she would be able to visit her grandmother as planned. The accused person must have known that the pesticide was poisonous because her intention was to get rid of the deceased. This therefore proves the final ingredient of murder that there was malice afore thought.

21. In light of the above the prosecution was able to prove their case beyond reasonable doubt and consequently I find that the accused is guilty of the Murder of **NEHEMA WENDO MUTEGI** and consequently convict her of the offence of Murder.

**HON A. ONG'INJO**

**JUDGE**

**JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 27<sup>TH</sup> DAY OF FEBRUARY 2020.**

**In the presence of :**

C/A: Kinoti

Accused:- Present in person

State: Ms Mbithe for state

Mr Igweta Advocate holding brief for Mutuma for accused.

**HON A. ONG'INJO**

**JUDGE**

**Ms Mbithe**

Accused maybe treated as 1<sup>st</sup> offender.

Mr Igweta

We can have a date for mitigation and sentencing.

Order: Mention 19.3.2020 for Mitigation, Pre-sentence report and victim Impact statement. Accused remanded at women's prison.

**HON A. ONG'INJO**

**JUDGE**