



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 15 OF 2017

REPUBLIC .....PROSECUTOR

VERSUS

**JULIUS THAIMUTA IKUAMBA.....ACCUSED**

JUDGMENT

1. **Julius Thaimuta Ikuamba** is charged with two counts of murder contrary to section 203 as read with section 204 of the Penal Code.
2. In count one the particulars of the offence are that on the night of 26<sup>th</sup> & 27<sup>th</sup> day of July 2017, at Matayos Health Centre, Nurses' residence in **Matayos** Sub County of **Busia** County, murdered **Zipporah N'kirote**.
3. The particulars of the offence in count two are that on the night of 26<sup>th</sup> & 27<sup>th</sup> day of July 2017, at Matayos Health Centre, Nurses' residence in Matayos Sub County of Busia County, murdered **Glory Kendi**.
4. Z N was the wife of the accused while GK was the couple's daughter. When their bodies were discovered in their house, the accused was one of the suspects. He was arrested and charged for their deaths.
5. Julius Thaimuta Ikuamba, the accused, contended that they were attacked by robbers. On discovering that his wife and child were dead, he fled to Eldoret where one of his sons was working.
6. The issues for determination are:
  - a. Whether any of the accused was involved in the killing of the deceased herein; and
  - b. Whether the offence of murder was established against any of the accused.
7. The evidence that link the accused to the deaths of his wife and daughter was adduced by Lang'at Sheila (PW1) assistant County Commissioner, Matayos. Her testimony was that one Derrick Kilemi (a son of the accused) reported to her that the accused had informed him that his wife and child had been killed at Matayos. She testified of an incident when the accused had sought arbitration from her office. There was financial between him and his wife and witchcraft allegation. She said that the accused had complained that his wife was not supporting him financially and especially facilitating for his treatment for arthritis.
8. This was therefore the basis on which he was charged. This evidence coupled with the fact that he was in the house at the time the two victims met their deaths is circumstantial evidence. In the case of **Rep vs. Kipkering Arap Koskei & Another 16 EACA 135**, the Court of Appeal held:

**In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.**

9. The fact that the accused and his wife had differences that prompted them to seek for arbitration cannot form a basis to conclude that he must have been the killer. What this evidence does is to form a basis for suspicion upon which the investigating officer was to make a starting point for his investigations. It is common knowledge that not every domestic disagreement ends up in death of a party. The investigating officer did not investigate this matter at all. We were only left with evidence of suspicion. On suspicion the Court of Appeal in **Sawe vs. Republic [2003] KLR 354**, held as follows:

**Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.**

10. On the fateful night the accused was in the same house with the deceased persons herein. His version is that they were attacked by robbers. It would appear that the prosecution thought that his failure to report but instead fled to Eldoret was an indication that he was the killer. He explained that after the incident he became very afraid and fled to Eldoret. The prosecution was expected to disprove this assertion by adducing evidence that linked him to the killings. This was not done.

11. P.C Stanley Tiget (PW2) testified that they arrested Morris Mureithi as a suspect and was handed over to the police. It was incumbent upon the prosecution to show what had led him to be treated as a suspect and why he was not charged after investigations. This was again not done.

12. From the foregoing analysis of the evidence on record, I find that the prosecution has not proved its case against the accused. I accordingly acquit him of the offence of murder and set him free unless if otherwise lawfully held.

**DELIVERED and SIGNED at BUSIA this 24<sup>th</sup> day of March, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**