



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 26 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

1. CHRISPIN OBITA IDEIT

2. KENNEDY ONG'ARAPUS Alias KEN.....ACCUSED

JUDGMENT

1. **Chrispin Obita Ideit** and **Kennedy Ong'arapus Alias Ken** are charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.

2. The particulars of the offence are that on the 21st day of November 2018, at **Kakurikit "B"** village **Katotoi** sub location in **Teso North** Sub County of **Busia** County, murdered **Esther Ibossa Osukuku**.

3. The prosecution is that on the material day the two accused persons jointly beat the deceased who was the wife of the first accused and forced her to ingest some poison. She subsequently died from the poisoning.

4. The first accused contended that his wife took some poison upon her return from her parents' home. The second accused denied any involvement in the offence.

5. The issues for determination are:

- a. Whether the accused were involved in forcing the deceased to take poison;
- b. Whether it was proved that the deceased died of poisoning; and
- c. Whether the offence of murder was established.

6. Nicodemus Osukuku Omusugu (PW5) testified that his daughter, the deceased herein went to his home at about 9 p.m. She reported to him that her husband (accused 1) and his brother (accused 2) had beaten her and forced her to take some poison. He took her to hospital. Moses Erick Osia (PW7) a village elder and a neighbour of the first accused testified to the same effect. His evidence was that when he heard some screams and went out, he saw the deceased running towards his home. She reported to him that her husband (accused 1) and Ong'arapus (accused 2) had beaten her and forced her to take some concoction. This was at about 8 p.m.

7. The first accused in his defence said that he returned home at about 7.30 p.m. but did not find his wife. She arrived after about five minutes. When he asked her why she was late, she just went to the kitchen. He left for the home of Edwin, his brother. After about 20 minutes, his eldest daughter went running and reported to him that her mother had taken poison.

8. Cynthia Imamai (DW3) is the eldest daughter of the first accused and the deceased. Her evidence was that her mother mixed some chemicals. She ran to tell her father.

9. Other than what the deceased is alleged to have told her father (PW5) and the village elder (PW7) we do not have any other independent evidence to support the claim the deceased was forced by the two accused persons to drink some poison. The defence has adduced evidence that contradicted the contention by the prosecution.

10. Dr. Harun Ombongi (PW3) formed an opinion that the cause of death was caused by poisoning. His opinion was informed by his finding by the inflammatory changes on the stomach wall. I however have an issue with this opinion for it was not supported by the analysis of the samples that were taken from the body of the deceased.

11. Jane Nabututu Waya (PW1) a government analyst analyzed the sample forwarded to her which were as follows:

- a. A transparent polythene bag marked “A” containing white granules.
- b. A transparent polythene bag marked “B” containing a brownish powder.
- c. A dirty empty brush cup marked “C”.
- d. A tiny piece of stomach in a small transparent plastic container marked “D”.
- e. A stomach content in a small container marked “E”.
- f. A vial marked “F” containing blood.
- g. A tiny piece of liver in a small transparent plastic container marked “G”.

Her report reads:

The above exhibits were analyzed and white crystals tested positive for ZOLPIDEM (white granules) a hypnotic drug, while the brownish powder was found to be an inorganic substance. No poisonous substance was detected in all other exhibits.

12. When Dr. Ombongi (PW3) opines that the cause of death was poisoning, one is left wondering what was his basis for neither the stomach content nor blood or any item sent for analysis supported his conclusion. No poison was detected in them.

13. The prosecutor further failed to elicit evidence as to whether ZOLPIDEM, a hypnotic drug was poisonous if ingested apart from its hypnotic effects. Secondly and most importantly, it was not linked to either accused persons. There was absolutely no evidence as from where it was recovered.

14. From the foregoing evidence on record, the prosecution has not proved that the deceased died of poisoning. None of the accused persons were linked to her death by the evidence on record. I therefore acquit each one of the offence of murder and set him free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 24th day of March, 2020

KIARIE WAWERU KIARIE

JUDGE