



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL CASE NUMBER 33 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

MICHAEL JUMA NGACHO.....ACCUSED

J U D G M E N T

The accused **Michael Juma Ngacho** is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. In that on 15th day of October, 2018 in Maraka Village Webuye East Sub-County within Bungoma County Murdered **Purity Nanjala Juma**.

The accused is the father of the deceased Purity Nanjala Juma who at time of death was aged 2½ years. The accused and the mother of the deceased separated in 2019 and the mother was married elsewhere leaving the deceased in the care of accused and his mother **Rita Nang'unda Ngacho (PW 1)**. The deceased used to sleep with the grandmother Rita Nang'unda (PW 1) in her house. On 15th October, 2018 Rita Nang'unda was with the deceased when accused came and asked to go with deceased to the market to buy her soda. Rita allowed him and accused left with the deceased. The accused did not bring the deceased back. Later Rita's husband and father of accused received information that accused was saying he had killed a person. She went to the house of accused. On entering she found deceased hanging in the house in the strass using a net string. She reported the matter to police.

PW 2 Moses Ngatia Simiyu the father of the accused testified that on 15th October, 2018 at 12 p.m., his brother Morris Minyange called him and informed him that accused was saying he had killed a person and the brother wanted to know who it was. He informed his wife (PW 1) who went to accused's house and on checking found deceased hanging in the house. He went there and confirmed. Police were informed and they came and took the body to the mortuary.

PW 3 Morris Manyango Kundi, the uncle of the accused was standing outside his house when he saw accused falling down and vomiting. He went there to check and asked accused what the matter was. Accused told him he had taken poison and wanted to commit suicide. He called accused's father and informed him. Accused on hearing the matter being reported ran away.

PW 5 No. 231207 PC Edwin Onyango received the report of Murder and with colleagues visited the scene. They entered the house of accused and found deceased hanging from the strass in the house, with a net string around her neck. They took photographs of the deceased hanging and removed the body. The accused later surrendered himself to Matete police station. Accused was then collected by Webuye Police and charged with present offence.

PW 6 No. 61055 Sgt Erastus Nyongo was at Matete police Station when the accused went there and reported that earlier that day he had hit his daughter with a stick who then died. He alleged that he had found his wife with another man and had intended to hit her but instead hit the deceased. He detained him and later handed him over to police in Webuye. PW 4 Dr. Kennedy Barasa who performed the post-mortem found that the deceased died due to strangulation.

The accused upon being placed on his defence testified that on 15th October, 2018 he woke up and went to his boda boda business. He came back at 8.00 a.m. informed his mother (PW 1) that he wanted to take deceased to the shops. He left her with other children. At 12 p.m. he came back and found his house broken into and the child killed. He screamed and people came. He then went to Matete police station to report. He confirmed that when he came he found the deceased having been strangled. He denied taking poison in attempt to commit suicide.

That the accused died due to strangulation was confirmed by **PW 4 Dr. Kennedy Barasa** who conducted the post-mortem on the body of the deceased. The prosecution witnesses also testified that indeed the deceased child was found hanging in the house. This is further confirmed by the accused in his evidence.

None of the prosecution witnesses saw the accused strangling the deceased. The prosecution did not adduce any direct evidence to connect the accused to the death of accused.

The prosecution, however, relied on circumstantial evidence to prove that it was accused, and no one else who committed the offence. A party who seeks to prove a fact by circumstantial evidence must establish that: -

- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
- iii. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.*

Those principles were set out in the case of **GMI v. Republic** [2013] eKLR which echoes the *locus classicus* case of **R. v. Kipkering Arap Koske & Another**, 16 EACA 135.

*iv. In order to ascertain whether or not the inculpatory facts put forward by the prosecution are incompatible with the innocence of the appellant and incapable of explanation upon any other reasonable hypothesis than that of guilt, we must also consider a further principle set out in the case of **Musoke v. R** [1958] EA 715 citing with approval **Teper v. R** [1952] AL 480, thus:*

“It is also necessary before drawing the inference of accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.”

The chain of events that the prosecution is relying on in this case are

- (a) That the accused asked PW 1 RITA to allow him go with the deceased to the shop to buy her soda.**
- (b) The accused left with the deceased.**
- (c) The accused informed PW 3 who found him vomiting that head taken poison to die and had killed a person.**
- (d) The house of the accused was visited where deceased was found hanging.**
- (d) That deceased was a child at 2½ years and would not have committed suicide by hanging.**
- (f) That accused surrendered to the police station and lied about the circumstances of death of deceased stating that he had hit her with a stick.**
- (g) That the accused was the last person seen with deceased alive.**

All these circumstances were established by the prosecution. The circumstances taken cumulatively lead this court to draw an inference that it is accused who murdered the deceased and no one else. I, therefore, find that accused **Michael Juma** guilty of the charge of Murder Contrary to Section 203 as read with Section 204 of the Penal code and convict him accordingly.

Dated, signed and delivered at Bungoma this 25th day of November, 2020.

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S N RIECHI

JUDGE

SENTENCING

25/11/2020

Before S N Riechi

Nyakibia for State in Bungoma

Wilkister – Court Assistant – In Bungoma Court

Natwati for accused - bungoma

Nyakibia: Accused may be treated as first offender.

Natwati: the accused is remorseful for having committed the offence. The accused is a young man aged 30 years and is a breadwinner to the aged mother and father. Pray for leniency.

Court: The court has taken into account the fact that accused is first offender and what has been stated in mitigation. The offence is serious and led to loss of life. Accused is sentenced to **Twenty (20) years** imprisonment. Right of Appeal within 14 days.

Dated, signed this 25th day of November, 2020.

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S N RIECHI

JUDGE