



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 77 OF 2014

REPUBLIC.....PROSECUTOR

V E R S U S

ROMANO KOBIA LOSIA.....ACCUSED

JUDGMENT

The Accused Romano Kobia faces a charge of Murder contrary to section 203 as read with section 204 of the penal code.

Particulars are that Romano Kobia alias Losia, between the 4th and 7th January 2013 at Lukununu village, Antuambui Sublocation, Antuambui Location in Igembe North District/ subcounty within Meru County murdered Gladys Kambura. The deceased person herein according to all prosecution witnesses was cohabiting with the accused as husband and wife and had been blessed with one child.

According to Florida Kajuju – PW8 on 1st day of January 2013, the accused and the deceased took their only child to hospital. That PW8 left home and on return at 4.00 pm her daughter PW7 told him that the accused had chased them away when they went to see how he was beating his wife.

That on 5.1.2013 when a meeting of the clan members and elders was called and Romano didn't come with his wife he was sent to bring her and the deceased attended the meeting.

PW8 send the accused persons wife said the accused had beaten her. That the meeting was called to resolve conflict between Douglas and Romano but elders ordered Romano to take his wife to hospital before the meeting could go on. That although Romano accepted to take the wife to hospital he was very harsh.

The following day accused said that he took the wife to hospital and left her at her mothers place. That on 7.1.2013 the accused person abandoned the child in the middle of the 3 homes of PW8, that of accused and another brother and told PW8 to take the child to the deceased but she refused. She demanded for contact for the deceased person's mother but accused referred her to mama Kalaju. PW8 said that on the material day there was foul smell coming from Romanos Farm.

That she got the contact for accused persons mother-in-law from Kainga Machiri and when she called she was told by the deceased persons mother that she last saw her on 1st January 2013 when they had taken the child to hospital.

PW8 and Kainga decided to report to subarea Manager to establish what was smelling in Romanos compound. That together with Kainga subarea and Kobia they went round Romano's compound and found someone had been buried in a pit latrine that Romano had dug. She said the person was buried upside down and it is the legs that could be seen.

That in company of Douglas Mutwiri, Mutah Kiemo, Joseph and the Subarea went to Laare police station and reported. That police advised that they took for Romano but his borthers didn't trace him. PW8 said that Romano swore to kill her for reporting the matter to police and she decided to seek refuge at a neighbours home and was not present when the body was removed from the pit.

PW8 said that accused didn't like it when his wife the deceased interacted with them and even children could not play in his compound and he said that the accused and deceased could go on drinking sprees and on return fight. It is PW8 who called and reported to Douglas Mutwiri –PW3 and Mutai Meme – PW4 brother to accused that accused persons wife was found dead and buried upside down a pit within accused persons compound.

In company of the sub area and PW8 they went to Laare Police station and made the report. PW3 said that police from Meru collected the body but he was not present and accused was also not present. PW3 said he didn't know if accused had any dispute PW3 admitted that he

recorded in his statement that PW8 told him accused and deceased had a fight and thereafter she disappeared only for her body to be found buried in unused pit latrine. He said he saw the accused 3 days prior to 3.1.2013 but he didn't know where and when he was arrested. PW4 said he went to look for accused in the village but didn't find him. He said accused disappeared after killing the wife. PW4 said accused and deceased had disputes at home. PW4 also said that he was not at home when deceased body was collected by police and she didn't attend burial.

PW4 said he had seen the deceased on week prior to 13.1.2013. He didn't know when or where accused was arrested from. He said he never used to visit accused because he was a drunkard. PW5 P.C. Moses Wanjala in company of Chief inspector Alex Oware, CPL Victor Nambwenya and P.C. Driver Phillip Etole Proceeded to scene on 14.1.2013 and found the decomposing body of a female adult buried in a shallow pit latrine. The body was retrieved and escorted to Meru level 5 Hospital mortuary where Dr Njuguna carried out autopsy as per EXP1 produced PW6 Dr Stephen Kibeing Chege. PW5 said that accused was arrested 14th September 2014 by CPL Peterson Nyauwa and APC Rop of Muutune AP post and was escorted to Laare Police station where charge was preferred and he was arraigned in court on 8th October 2014.

PW5 said that when they visited scene all doors were locked and family members had fled. That it is only accused persons house which was wide open. The Investigating Officers evidence was to the effect that statements recorded pointed at the accused as the perpetrator of the murder of his wife.

PW8 also made report of deceased persons death to her brother in law PW1 and to her brother PW2 and they are the ones who had report booked at Laare police station.

When accused was placed on defence, he gave a sworn statement and said that on 4th January 2013 he took his wife to hospital as she had abdominal pain. They returned home at 6.00 pm and that at 9.00 pm the deceased started vomiting. Accused said by the time the wife was vomiting he was drunk. That the wife went out of the house and he thought she had gone to his mothers house which was about 30 metres away. That when the deceased Gladys didn't come back he went to find out from his mother's house but didn't find her there. He said there was a 3 feet deep pit which his wife body was recovered. He said the wife and died in the pit.

Accused said he didn't escape from home. He said he was arrested at Mogutune which is 30 Kms from his home. He said he didn't kill his wife and had not differed with her. He said the deceased vomited on the bed at 11.00 pm and that is when she left the house.

He said the deceased had ulcers. He said the deceased used to be drunk. He said Florida PW8 lied in court because the husband from whom she separated was accused persons friend. He said that he didn't leave his children with Florida. He said his 2 wives had their own houses within same compound. He said PW8 house is 30 m away from his house. He said PW8 used to walk with the deceased and could go to Salon and chew miraa and come home later and he was annoyed. He said that the soil that buried deceased fell on after she had fallen in the pit.

He said deceased persons body was recovered after 4 days. He said he looked for deceased at her parents place. He said he is the one who dug the pit which is 15M from his house. He said he saw the deceased persons body in the pit on the 4th day. He said he used to be drunk and didn't feel the smell from the decomposing body.

From the evidence on record for the prosecution and defence as well as written submissions by defence counsel, this court is to determine whether the prosecution has proved the 4 ingredients of offence of murder as is provided for under section 203 of the penal code namely:-

- i. The fact of the death of the deceased.
- ii. The cause of such death
- iii. Proof that the deceased met his death as a result of an unlawful act or omission actuated by malice aforethought.
- iv. Proof that the said unlawful act and/or omission actuated by malice aforethought was perpetrated by the accused.

The fact of death of the deceased was proved by all the prosecution witnesses who testified in this matter in support of the prosecutions case.

The cause of death of the deceased was established by a Post-mortem report Exp1 conducted by Dr. Njuguna on 22nd January 2013 and produced by Dr. Stephen Kibengu Chege on 13th February 2019. According to Dr. Njuguna, the deceased body was decomposed from outside and in the inside it was found the 2nd, 3rd and 4th rib were fractured on the left side of the chest. On the head of the deceased there was linear fracture involving temporal and Occipital bones on the left and there subdural clotted blood on the left subdural space. Dr Njuguna concluded that the cause of death was severe injury to head due to blunt trauma.

On whether death resulted from an unlawful act of omission actuated by malice aforethought this court was told that the deceased had been assaulted by the accused person on 1st January 2013 and that when a clan meeting was held and the deceased failed to attend the accused was forced to go and get her from the house and the elders on seeing the deceased forced the accused person to take her to hospital. PW8, the key witness herein told the court that the accused was not happy at the orders given by the elders. He left to take the deceased to hospital but that was the last time the deceased was seen alive. The accused person while knowing too well that he had injured and killed the deceased and buried her secretly in pit within his compound lied that he had left her at her mother's place. When PW8 declined to take the accused and deceased person's child after the accused had abandoned him PW8 contacted the mother of the deceased and learnt that the deceased was not there. The accused on the material day disappeared from home. It is the foul smell emanating from the accused person's home that raised the suspicion of PW8 who informed PW3 and 4 and the Area manager to go round the compound and establish what was smelling only to find the body of the deceased buried in a pit with feet above the soil used to cover her body. From the injuries established by the Doctor upon

conducting Postmortem the deceased must have died from those injuries before she was buried secretly by the accused person. The injuries found in the deceased body must have been inflicted by an unlawful act and intentionally by the perpetrator. The fact that the deceased body was buried secretly within the accused persons compound 15 metres from his house confirms that the action by the perpetrator was actuated with malice aforethought.

The accused person in his defence testified and claimed that the deceased left the house at 9.00 pm when she started vomiting and that by then he was drunk and thought the deceased had gone to his mothers house but he followed her he didn't find her at the mothers house. He says he suspected that his wife fell in a 3ft deep pit within his compound and died. He died having killed the deceased. The accused however did not report that his wife was missing either to Area Manager, the Assistant Chief or the Police. His mother didn't come to court to confirm. When he was asked about the deceased he said that he had left her at her mother's place after taking her to hospital. When he wanted to give his child to PW8 on 7th January 2013 and PW8 insisted on establishing that the deceased was indeed at her mother's place so that she could take the child, the accused referred her to take the contacts of his mother in-law from 3rd parties. Upto that point he had not told anyone that his wife left the house at night and was missing. He made PW8 believe that the deceased was at her mothers place. This court therefore finds the defence by the accused that he was not aware of what happened to the deceased as untruthful. His disappearance from the village as evidenced by his brothers PW3 and PW4 confirms he was running away after killing the deceased. He was arrested over 1 year later on 14th September 2014 in Muutune by Administration police officers. He has not explained in his evidence what he was doing away from home for over one year after the alleged disappearance of his wife.

This court finds that the circumstances surrounding the death of the deceased all point to the accused as the killer of his wife. The Prosecution has provided sufficient evidence for this court to make a finding that the charge of murder has been proved beyond all reasonable doubt. This court finds the accused person guilty and he is accordingly convicted under section 322(2) of the CPC.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 30TH DAY OF MAY 2019.

In the presence of :

C/A: Mr Kinoti

Prosecutor: Ms Mbithe for state

Accused: Present in court

Mr Wamache advocate for accused.

Ms Mbithe

We can have mention date to confirm records.

Order:- Mention 27.6.2019 for records, mitigation and victim impact statement and sentencing.

HON A. ONG'INJO

JUDGE