



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 14 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

GEORGE WILLIAM ONYANGO.....ACCUSED

JUDGMENT

1. **GEORGE WILLIAM ONYANGO** is 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 night of 23rd and 24th day of December, 2015 at **BUMALA** location of **BUTULA** District within **BUSIA** County, murdered **MARGARET ADERO**.
3. On 23rd December 2015 at about 11 pm the deceased herein woke up her granddaughter. When she opened the door of the kitchen where she was sleeping, she found her grandmother burning. She assisted in removing her clothes that were on fire. She said that the accused (her husband) had set her on fire. She was taken to hospital where she was admitted until when she died on 23rd April 2016. The accused was arrested and charged with the offence of murder.
4. The accused in his defence contended that the deceased accidentally set herself on fire while lighting a tin lamp.
5. The issues for determination are as follows:
 - a) Whether the deceased was burnt by the accused or she accidentally caught fire;
 - b) Whether the death of the deceased was as a result of the burns; and
 - c) Whether the accused was the cause of her death.
6. **C A (PW4)** was a 15 years old granddaughter of the deceased and the accused who was living with them. She used to sleep in a detached kitchen. While in bed, her grandmother (the deceased herein) went to the kitchen door and asked her if she had seen somebody go to their door. When she told her she had not, she went back to her house. After a short while she heard the accused asking the deceased what she was doing outside. He asked her to go back to her house as nobody could go there. She then heard the accused telling the deceased:

“Today we have surrounded you even if you pretend you are praying.”

Her grandparents went back to their house. After a short while her grandmother returned to the kitchen door crying in pain. When she opened the door, she found her burning. She assisted her to remove the clothes that were on fire. The deceased said that the accused had burnt her. She rushed to call her uncle John Oswaka.

7. The evidence of **John Oswaka (PW5)** is that when he arrived at her parents’ home, he found his mother crying in pain. She said that the accused had used paraffin to burn her. The evidence of **Fanice Anyango Juma (PW1)** is that when she arrived at her sister’s home, the deceased who was in a lot of pain said the accused had burnt her. She made this accusation in the presence of the accused and other people.

8. **Hamisi Arua Magero (PW2)** testified that the deceased was his sister. He said that the deceased informed him that a quarrel with the accused arose due to some unaccounted money after she had sent him to sell some charcoal.

9. From the recapitulation of the evidence that surrounded the events that led to the deceased to sustain burnt injuries, the following facts emerge:

- a) At the time of the incident the deceased was with the accused in their house alone;
- b) That there was a quarrel over unaccounted money. This evidence was not challenged;
- c) That the accused was heard issuing threats to the deceased. Again this evidence was not challenged; and
- d) That the deceased said in the presence of the accused that he was the one who had burnt her. The accused did not protest the accusations.

I therefore make a find that it was the accused who set the deceased ablaze.

10. **Dr. David Mukabi (PW8)** is a consultant physician at Busia County Referral Hospital. He is the one who performed post mortem on the body of the deceased herein. His findings were as follows:

- a) Healed burn marks involving both upper limbs.
- b) Multiple abrasions on both upper and lower limbs (some are post mortem).

He formed the opinion that the cause of the death was cardiorespiratory collapse, secondary to severe anemia and large gut obstruction. During cross examination he said it was not easy to ascertain the cause of the obstruction though he opined that it was possible that the obstruction was functional due to the long period she was admitted in hospital as a result of the severe burns.

11. It is apparent that the prosecution case was based on suspicion on the cause of the death of the deceased. It is trite law that suspicion alone cannot be a basis of conviction. In the case of **SAWE vs. REP [2003] KLR 354**, the Court of Appeal held as follows:

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

In the instant case, the prosecution did not adduce evidence which could form a nexus between the burns that were caused on the deceased by the accused and her subsequent death.

12. I therefore find that the prosecution has failed to prove its case against the accused. I acquit him of the offence of murder and set him free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 29th day of May, 2018

KIARIE WAWERU KIARIE

JUDGE