



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CRIMINAL CASE NO.28 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**THOMAS HAMAROME WEKESA .....ACCUSED**

**RULING**

1. The accused **Thomas Hamarome Wekesa** is charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars of the charge are that on the 17<sup>th</sup> day of July, 2014 at Kewa village, Ndivisi location in Bungoma East within Bungoma County he murdered his wife Rose Beneteta Hamarome Wekesa.

2. As the accused entered a plea of not guilty the matter proceeded to full trial.

3. The Prosecution called 3 witnesses. **PW1 Morris Wamamuli** a son of both the accused and deceased aged 15 at the time of giving evidence, stated that their mother left for the posho mill on the fateful day the 17<sup>th</sup> of July, 2014, she did not return later with his siblings Catherine and Kevin they looked for her and found her lying in a maize plantation drunk. They took the unga cooked, ate and slept. They did not see their mother that night at home.

However on 18<sup>th</sup> at around 5p.m. their father the accused informed them that their mother had died and they found her lying in the house. He did not see any injuries on his mother. He believed his mother died as a result of alcohol.

4. **PW2 Hudson Nyongesa** while in his shamba on 18/7/2014 he heard of Rosy's death and rushed to their home 1½miles away. He viewed the body, the head and hands were swollen. He called the Mukasa and the Clan elder. He later heard people shouting and saw people give chase to the accused who had attempted to run away, but was apprehended.

In cross examination he said that the deceased used to drink and this brought disagreement between her and the accused.

5. **PW3 Richard Mwasame Walukho alias Cherobari.**

He learnt of the deceased death on 18/7/2014. The accused sent for him. The accused told him that he had battered the wife. The deceased clan was harsh and wanted to beat the accused who may have ran for his life. He did not see the body of the deceased.

6. Despite several adjournments the last having been granted on the 30<sup>th</sup> of May, 2016, and when the matter was next slated for hearing on the 29<sup>th</sup> of March, 2017 the Court declined to allow any further adjournment as no reason was given why the witnesses were not made available despite previous orders. The Prosecution had therefore to close its case.

7. From the evidence so far adduced only 1 ingredient of the offence of murder was brought forward, the fact of the deceased death.

8. **PW2 & 3** appeared to suggest that the accused may have battered the deceased as the deceased had swollen hands and face. They did not witness the battering though. PW3 stated that the accused told him that he had battered his wife, this however remains uncorroborated. The absence of a post mortem report also leaves the allegation of battering as cause of death, uncorroborated. All in all there is no evidence so far that can safely be relied upon to link the death of the deceased to the accused. Secondly no malice aforethought was proved.

9. In the case of **Ramanlal Trambaklal Bhatt vs Republic (1957) E.A. at 332** the standards were set as follows;

***“(i) The onus is on the Prosecution to prove its case beyond all reasonable doubt and a prima facie case is made out if at the close of the Prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.***

***(ii) The question whether there is a case to answer cannot depend only on whether there is ‘some’ evidence irrespective of its credibility or weight sufficient to put the accused to his defence. A mere scintilla of evidence cannot be enough; nor can any amount of worthless discredited evidence”.***

10. I have formed the opinion that the evidence of the 3 Prosecution witnesses fails to meet the required threshold and it is not sufficient enough to place the accused on his defence.

11. Consequently I acquit the accused for lack of evidence under section 210 of the Criminal Procedure Code.

He is hereby released unless otherwise lawfully held.

**DATED and DELIVERED at BUNGOMA this 27<sup>th</sup> day of April, 2017**

**ALI-ARONI**

**JUDGE**