



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 54 of 2011**

**REPUBLIC ..... RESPONDENT**

**VERSUS**

**JULIA JEPKEMOI TARUS..... ACCUSED**

**JUDGMENT**

The accused **JULIA JEPKEMOI TARUS** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the offence were that:-

***“On the 9<sup>th</sup> day of July, 2011 at Esageri Forest in Koibatek District within Baringo County murdered KEMBOI”***

The accused entered a plea of ‘**Not Guilty**’ to the charge. Her trial commenced on 13/7/2011 with the prosecution calling six (6) witnesses in support of their case. **MS. CHEGE** Advocate acted for the accused.

**PW1 EUNICE JEPKOSGEY** told the court that the accused was her sister. On 9/7/2011 at about 10.00am after having breakfast the two headed to Esageri Forest where **PW1** sold changaa. Present with them in the forest were **JOSEPH KOMEN PW3** the husband to **PW1** and the deceased known as ‘**Kemboi**’.

The accused purchased changaa for Ksh 20/=. Then she and deceased began to argue over some ‘**things**’ which he was to return to her. The two then left. At 4.00pm they returned to the forest. Suddenly **PW1** saw deceased fell down bleeding. She saw the accused holding a panga. **PW1** then ran away.

**PW2 DAVID KANDIE** told the court that on the material day he saw people running about. He rushed to check what was happening. He found deceased lying dead in the forest. **PW2** says he met the accused near the body holding a blood-stained panga. She was muttering to herself saying that she had cut deceased on the neck.

The incident was reported to the chief who called in the police. Police came and took the body to the mortuary. The accused was later arrested and charged.

At the close of the prosecution case the accused was found to have a case to answer and was placed onto her defence. She gave an unsworn defence in which she totally denied having slashed and killed the deceased.

The offence of murder is defined by Section 203 of the Penal Code as follows:-

***“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”***

On the fact and the cause of death of the deceased there can be no controversy. **PW1** said she saw deceased fall down bleeding. **PW2** who ran to the scene after hearing shouts confirms that he found the body of the deceased lying in the forest with a cut to the neck. All these witnesses who knew the deceased well identify him as **‘Kemboi’**.

Evidence regarding the cause of death was given by **PW5 DR. TITUS NGULUNGU** a pathologist attached to Nakuru Provincial General Hospital. He examined the body of the deceased and noted one large incision wound on the left upper neck. The head was partially decapitated. **PW5** opined that the cause of death was **‘neck structure injury involving vessels, nerves and spinal cord with haemorrhage due to incision on the neck’**

He filled and signed the post mortem report which was produced in court as an exhibit **P. Exh 2**. It is therefore proved that the deceased met his death as the result of being cut on the neck.

Having proved the fact as well as the cause of death of the deceased the prosecution is required to go further and tender evidence to prove that it was the accused who unlawfully slashed the deceased on the neck thereby killing him.

**PW1** was present when the incident occurred. She stated that she saw deceased suddenly fall to the ground bleeding. Probably due to the fact that the accused is a sister to **PW1**, the witness was deliberately vague in her testimony. She states that she did not see accused slash the deceased. Under cross examination **PW1** say

***“The deceased was bleeding from the neck. He was standing and then fell I do not know how he sustained the injury....”***

The court cannot assume that it was accused who cut the deceased on the neck. Concrete evidence must be adduced to show that this was so. The mere fact that **PW1** said the accused had a panga at the time is not proof of *actus reus*. It must be shown that accused used this panga to slash the deceased on the neck.

**PW2** told the court that he went to the scene after hearing the commotion. He claims that he heard the accused say that she had killed the deceased. This evidence is tantamount to a confession. Section 25A of the Evidence Act clearly sets out the circumstances under which a confession will be admissible as evidence. The conditionalities set out by Section 25A have not been met in this case. Further **PW2** admits that he did not include this in his statement to police. To the extent that the evidence of **PW2** seeks to show that the accused admitted to having committed the act in question it is inadmissible and will not be considered by this court as proof of any fact in issue.

**PW6 CHIEF INSPECTOR JANE THUITA** was the investigating officer. She told the court that the accused led police to her compound from where they recovered a blood-stained panga. The said exhibit was produced in court. **P. Exh 1. PW6** however could not confirm that the blood on that panga was human blood nor is it shown that the blood matched that of the deceased. Despite evidence from **PW6** that the panga was forwarded to the Government Chemist for analysis, no report of such analysis was ever produced in court and the Government Chemist did not testify in this matter. Therefore there remains an unanswered question of the origin of the blood on that panga.

A panga is a common farm implement and is found in many rural homes in Kenya. It is an implement often used to slaughter livestock. Thus it was imperative for the prosecution to establish a link between the blood stains on the panga and the deceased.

It is a cardinal principle in law that the burden lies at all times upon the prosecution to prove its case

beyond reasonable doubt. The prosecution must prove all aspects of their case. A mere suggestion or possibility of guilt will not suffice. I find that the prosecution failed to establish a crucial link in this case. This failure causes their case to fail. I award the benefit of doubt to the accused and I acquit her of the charge of murder. Accused is to be set at liberty unless she is otherwise lawfully held.

Dated in Nakuru this 17<sup>th</sup> day of June 2016.

**Maureen Odera**

**Judge**

Ms Ndenda holding brief for Ms Chege

Ms Rugut for DPP