



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL (MURDER) NO. 100 OF 2010

REPUBLICPROSECUTOR

VERSUS

VINCENT MICHIRA OBEBO Alias ISANDAACCUSED

JUDGMENT

1. The accused, **Vincent Michira Obebo** Alias **Isanda**, is charged with murder, contrary to S. 203 as read with S. 204 of the Penal Code, in that on the 30th October 2010, at Nyamware Sub-location in Keumbu Division of Kisii County, together with another not before court murdered Leonida Mogata Nyariki.

2. The case for the prosecution was that on the material date at about 7.00pm, the deceased was at her home with her children **Harriet Nyariki (PW 1)** and **Edwin Karania (PW 2)**, when a group of people intruded on them and forced the deceased into a corridor or a room and murdered her by slashing her neck with a panga (machete).

The group is said to have been armed with offensive weapons such as pangas and knives.

3. The incident was reported to the police and in the course of investigations, **C.IP Gilbert Cheruiyot (PW 4)**, visited the scene and found the dead body of the deceased in the house with deep cuts on the neck and stomach.

He arranged for photography of the scene and drew a sketch plan. He interrogated the aforementioned children of the deceased who alleged that the accused was one of the murderers. He (PW 4) arranged for a post mortem examination which was conducted by a DR. Miyoga Dennis.

4. **DR. Samuel Onchari (PW 3)**, produced the necessary post mortem report (P.Ex 1) which showed that the cause of death was suffocation following strangulation and hemorrhagic shock due to deep cut wounds on the neck region.

The investigating officer (PW 4) and his team arrested the accused in his house. His clothes were found to have fresh blood stains and he was found in possession of a new mattress which had allegedly been bought by the deceased recently.

5. The accused's clothes and other items were forwarded to the Government Chemist for necessary analysis after which a report was compiled (P.Ex 7) and produced in court by the investigations officer who concluded that the deceased was murdered after being suspected to be a witch.

The accused was eventually charged with the present offence.

6. In his defence, the accused denied the charge and stated that he was previously employed by the Kenya Power & Electricity Company and was based at Homa Bay. It was his habit to visit his family at his rural home in Kisii every end of the month and on the material date he left his place of work and arrived in Kisii. His friends offered to help him with his luggage but he was shocked when they told him “sorry”. He did not understand what they meant until he was informed that his brother’s wife had died.

7. The accused proceeded to his home and thereafter left for his brother’s home where he found many people gathered. He returned to his home at 3.00pm and while relaxing there, the area chief appeared in the company of police officers at 5.00pm. They told him that he was required at the police station to record a statement but instead they arrested and locked him in the cells for the murder of the deceased, his sister-in-law. He remained in police custody for eleven (11) days before he was arraigned in court. He contended that he did not commit the offence and that the children of the deceased (PW 1 and PW 2) not only gave contradictory evidence but also false evidence against him. He also contended that there was no grudge between him and the deceased and therefore had no reason to kill her.

8. At the end of the trial, learned counsel for the accused, **MR. Ondari**, presented oral submissions and urged this court to acquit the accused for lack of watertight evidence against him.

The learned Prosecution Counsel, **MR. Otieno**, responded by contending that the evidence against the accused was sufficient and unshaken and established that the accused was responsible for the murder of the deceased.

9. From the evidence and the final submissions by both sides, it is apparent to this court that the fact that the deceased was murdered is not disputed. Indeed, evidence by the prosecution witnesses in particular the children of the deceased (PW 1 and PW 2) and the investigating officer (PW 4) showed that the group of people who entered the deceased’s home on the material date had no other intention but to kill her. The circumstances of the killing and the injuries inflicted upon the deceased left no doubt that the intruders’ mission was to kill the deceased and nothing more. If there was any theft in the house, then the act was an isolated one meant to cover for the main intention of the intruders i.e. to kill the deceased.

10. According to the investigating officer (PW 4), the deceased was murdered simply because of being suspected to have been a witch, if such a thing exists.

Be that as it may, the basic issue that fell for determination by this court was whether the accused was positively identified and/or recognized as having been part of the murderous gang of people.

The defence was a firm denial. It was therefore incumbent upon the prosecution to prove beyond any reasonable doubt that the accused was one of the offenders and in particular considering that the offence occurred in the hours of darkness which did not present favourable conditions for identification.

11. The two key identifying witnesses were PW 1 and PW 2, but they did not come out clearly as to how they were able to identify the accused as one of the murderers by means of light from a torch allegedly held on the neck of the deceased by the offenders. They did not mention the distance between each one of them and the intruders at the time or the intensity of the torch light to show that it was bright enough for a positive identification of the accused. Besides, the two witnesses (PW 1 and PW 2) clearly indicated that the intruders were wearing caps meaning that they had partly concealed their faces to avoid a positive identification by the witnesses.

12. In such circumstances, this court does not think that a proper or correct identification of the offenders or any one of them was made by the two identifying witnesses and even if the witnesses knew the accused as their uncle his alleged identification by them must have been mistaken.

It was unfortunate that the deceased was murdered in such a gruesome manner. However, the burden to establish the accused’s responsibility in the offence lay with the prosecution but was herein not discharged to the required standard.

13. Additional evidence adduced against the accused related to the blood stained items allegedly found in his possession but these were not linked to the deceased in any manner. In fact, the Government Analyst report (P.Ex 7) was of insignificant help to the prosecution case against the accused and so was the mattress allegedly found in possession of the accused. There was no proof that the mattress belonged to the deceased or that it was stolen from her house on the material date. There was simply no link between the mattress and the offence.

14. In sum, the prosecution evidence against the accused was not cogent and credible enough to sustain a conviction against him. He is therefore found not guilty as charged and is hereby acquitted.

J.R. KARANJAH

JUDGE

[Delivered and signed this 14th day of June 2016]