



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 2 OF 2014.

REPUBLIC.....PROSECUTOR.

VERSUS

JOSPINE KAIKOLACCUSED.

J U D G M E N T.

1. The accused, **Josephine Kaikol**, is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 3rd February, 2014, at Lolupe Village Turkana County, murdered Sarah Lokaale.

2. The case for the prosecution was that on the material date at about 10.00 p.m., **Joseph Aporon Lowosa (PW1)**, was at his house when he heard noises from a neighbour's house. He heard a person shouting "I have been killed! I have been killed". He proceeded to the neighbour's house and found the deceased lying on the ground with stab wounds on the abdomen and head. She told him that she had been stabbed by the accused.

3. He (PW1) found other people at the scene but not the deceased's husband. The accused was also not at the scene but a blood stained knife (P. Exh. 1) suspected to have been used in the assault was recovered outside the deceased's house. The deceased's husband later arrived at the scene and thereafter followed his wife to hospital.

4. **Joseph Ebei Ngole (PW2)**, a police reservist, was informed by a group of youths that the deceased had been stabbed and injured. He rushed to the scene and found the deceased lying on the ground in a state of injury. She was bleeding from the lower abdomen and back. He (PW2) and others took her to hospital and on the way there he heard her murmuring that she had been killed by the accused.

5. The deceased passed away while undergoing treatment. The post mortem report (P. Exh. 2) by Dr. Ekiru, indicated that the cause of death was haemorrhage due to splenic rupture

Cpl. Jane Ouko (PW3), investigated the matter and later preferred the present charge against the accused.

6. In her defence, the accused denied the offence and implied that the deceased was engaged in a fight with her husband and could have been stabbed by him in the process. She said that she and a neighbour called Alice went to rescue of the deceased when she screamed. They found her on the ground in a state of injury but her husband was not there.

She (accused) called a police reservist (KPR) who took the deceased to hospital and on the following day she (accused) and others found the deceased's husband at a quarry and raised money for him to go to

hospital to see his wife. She (accused) was later arrested for reasons she did not understand and was charged with the present offence.

7. From all the foregoing evidence, it is apparent that the deceased was critically assaulted by an individual and sustained injuries which proved fatal.

Nobody witnessed the incident but it was clear that it occurred inside her house which neighboured that of the accused and others.

The accused was viewed as a possible suspect by a neighbour (PW1) and a police reservist (PW2).

8. The reason for the suspicion was that the deceased had uttered words to the effect that she had been stabbed or killed by the accused.

Lowosa (PW1) heard such words when he rushed to the house of the deceased and found her on the ground. She informed him that the accused had stabbed her. She was alone at the time.

9. The police reservist, Ngole (PW2), while taking the deceased to the hospital heard her murmuring that she was killed by the accused.

In effect, the prosecution relied on the deceased's dying declaration to establish that it was the accused and nobody else who killed the deceased.

10. The defence was a denial and a suggestion that the deceased could have been killed by her husband as they had fought earlier during the day and that the husband could not be traced after the incident.

However, other than the accused, none of the other neighbours said that the husband of the deceased was with the deceased inside their house when neighbours were attracted by her screams and found her on the ground with injuries.

11. Viewed against the evidence of Lowosa (PW1) and Ngole (PW2), the defence raised by the accused was most likely than not an afterthought intended to be a red-herring.

This court found Lowosa (PW1) and Ngole (PW2) to be reliable witnesses. Their respective evidence was corroborative and credible enough for a holding that the deceased indeed made a dying declaration implicating the accused with assaulting and causing her fatal injuries.

12. What the prosecution lacked was sufficient evidence to establish that the accused assaulted the deceased with the intention of killing her.

Consequently, the charge established against her was that of manslaughter contrary to section 202 (1) of the penal code. The accused is thus found guilty of the offence of manslaughter and is hereby convicted.

[Delivered and signed this 22nd day of April, 2015.]

J.R. KARANJA.

JUDGE.