

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 81 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JOSIAH NYANGARI ORERO..... ACCUSED

RULING

The accused, **Josiah Nyangari Orero** is charged with murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on 17th day of May 2004 at **Parkroad** in **Nairobi** within **Nairobi Province** murdered **Elizabeth Musembi**. He denied the charge when arraigned in court on 18th October, 2011 and was remanded in custody.

The prosecution's case is that the accused wanted to befriend the deceased and upon her refusal, he set out to harm her. PW2 Robert Musembi who is the father of the deceased testified that the deceased had on 13th May 2004, complained to him that the accused who lived in the neighbourhood had continually stalked and harassed her. Together with his son and the deceased they visited the accused's home to investigate the complaint. The accused, however refused to co-operate and stormed out of the talks leaving his brother to talk to PW2.

The following day, the accused went to the deceased's home and PW2 sent him away. On the 17th May 2004. PW2 received a report that his daughter had been stabbed by the accused. PW1 Abdi Nganga Wainaina, PW3 Tecla Chemobo and PW5 Daniel Kariuki were all tutors at the Nairobi Technical Training Institute where the deceased was a student. In their testimony, they told the court how they learnt that one of their students had been stabbed outside the Institute's gate on the fateful morning of 17th May 2004. PW1 had earlier seen the accused and the deceased arguing outside the Institute's gate; while PW3 and PW5 responded to the commotion outside the gate and rushed to the scene to assist the deceased. PW3 and PW4 Joseph Muriithi who was a student rushed the deceased to hospital while PW5 went to report the incident at the Pangani Police Station.

PW6 Corp. Michael Kiplagat Aiyabei recovered a blood-stained paper bag containing the deceased's books and the murder weapon as well as an empty insecticide bottle at the scene. He testified that the accused was arrested at the Kiambu Hospital where he was admitted after attempting suicide and was found with the suicide note. The handwriting expert PW7 Emmanuel Kenga told the court that he confirmed the handwriting on the suicide note to be that of the accused. PW9 Dr. Jane Wasike Simiyu conducted the post-mortem on the body of the deceased and found a penetrating stab wound on the neck. She formed the opinion that the cause of death was severe haemorrhage. Dr. Kakinya of Mathare Mental Hospital conducted a psychiatric assessment of the accused and found that he was fit to be investigated after being treated for poisoning. The medical report was produced by Dr. Victoria Wamukuma.

At the close of the prosecution case, the defence made oral submissions urging the court to acquit the accused. They questioned the credibility of the evidence presented to the court stating that the exhibits produced did not link the accused to the offence and neither was an identification parade held to positively identify the accused.

After hearing the testimonies of the prosecution witnesses above and analyzing the evidence on record, I have come to the conclusion that the accused has a case to answer. He is put on his defence in accordance with Section 306 of the Criminal Procedure Code.

Orders accordingly.

Ruling delivered, dated and signed at Nairobi this 21st day of April 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused

.....: For the accused

.....: For the State