



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL CASE NO. 52 OF 2012**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**E C W.....ACCUSED**

**J U D G M E N T**

1. The accused, **E C W**, was charged with murder, contrary to Section 203 read with Section 204 of the penal code, in that on the **2nd December, 2012**, at [**particulars withheld**] in Trans-Nzoia County, murdered **L C M**.
2. The case for the prosecution arose from the facts that the accused and the deceased lived together as husband and wife. They operated a retail shop at [**particulars withheld**] within Kitale town and on the material date 2nd December, 2012, an employee of the Kenya Human Rights Commission, **K M O (PW1)**, passed through the shop to greet the couple. This was about 10.00 am. He passed his greetings but only the deceased responded. He went his way thereafter but at about midday he was called by the police and informed that the deceased was dead. He rushed to the scene at her shop and found her sitting on the chair he had left her sitting on. She was bleeding from a neck injury.
3. **E A (PW2)**, an engineer by profession, was a neighbour to the couple. At about 10.00 am on the material date, she was attracted by questions from some children with regard to the presence of an attendant at the couple's shop. She enquired by going to the shop which was not closed at its counter window and decided to serve the children who needed milk. In the process she peeped through the window to see whether she would pick a packet of milk for the children. It was then that she noticed the deceased sitting down on a chair inside the shop. She attempted to converse with the deceased but in vain.
4. She (PW2) became scared but nonetheless made her way into the shop and noticed that the deceased was motionless even as she sat down on the chair and that there was a lot of blood on the floor. She (PW2) was shocked. She returned to her house and passed necessary information to her brother who went into the shop and returned to tell her that the deceased was dead. She never saw the accused at the scene at the time she was there but was later to learn that the deceased had been stabbed on the neck with a sharp weapon.
5. **V M (PW3)**, sister to the deceased, was at their Kimilili-Bungoma home on the material date when she received a telephone call that something bad had happened to the deceased. She came to Kitale accompanied by another sister called C and found that the deceased was dead and that it was suspected that she had been killed by the accused who was her husband but the two had not legally entered into a marriage relationship. They had a son whose father was not the accused.

6. **Dr. Edward Odhiambo (PW4)**, conducted a post-mortem on the body of the deceased at Kitale District Hospital and thereafter compiled a report (P. Exhibit 1) showing that the cause of death was cardio respiratory arrest due to severe external hemorrhage from deep cut wounds.

The mother to the deceased, **C M (PW5)**, identified the body of the deceased for post-mortem.

7. **P.C. William Kimutai Kemboi (PW6)**, of the Scenes of Crime Section of the C.I.D. Kitale, proceeded to the scene of the offence on the material date and took several photographs of the scene and the body of the deceased as it was found at the scene [P. Exhibit 3(a)-(d)].

**D C K (PW7)**, was a neighbour and friend to the deceased who lived with the accused. She visited the deceased in her shop on the material date at about 7.00 am to buy blue-band margarine and take her own products to be sold. She (PW7) found the deceased in the company of the accused. She completed her business with the deceased and returned to her house.

8. At around 10.00 am, D (PW7) felt uneasy and when she got out of her house saw the accused standing at the gate to their shop. She greeted him and he left the scene. She noted that the door to their shop was closed. Later, she heard screams from a neighbour and on making inquiries learnt that the deceased had been found dead inside their shop. She proceeded to the shop and viewed the deceased's dead body. She also saw a machete (panga) which was blood stained. She knew both the deceased and the accused well. She re-called that at one time the deceased had confided in her that she (deceased) had learnt that the accused and herself were from the same clan such that traditions did not allow them to marry and so they had to separate. It was that information which was the cause of the stress engulfing them.

9. **P.C. Bernard Ndiwa (PW8)**, investigated the matter when it was reported to the police on the material date at about 12.30 pm. He visited the scene with his team and found a crowd gathered there and the body of the deceased in a sitting position. He recovered the suspected murder weapon (i.e a panga)(P. Exhibit 4) which had blood stains at the time. He noted that the body of the deceased had a deep injury at the back of the head. He arranged for photographs to be taken at the scene before removing the body to the mortuary. Later, the "husband" of the deceased who was suspected of her murder surrendered himself to the police and was arrested. He was the accused herein and was later charged with the present offence.

10. In the course of his investigations, P.C. Ndiwa (PW8), learnt that the accused had the intention of marrying the deceased but this was not possible due to the fact that they were relatives. This did not augur well with the accused and may have brought the circumstances leading to the death of the deceased according to him (PW8).

11. The accused's defence was a denial of having committed the offence and a contention that he did not know the reason behind the murder of the deceased. He indicated that on the material date he woke up at his home at [particulars withheld] in Kitale as usual and prepared to proceed to Eldoret. He proceeded to Eldoret and returned to Kitale at about 5.00 pm and while waiting for his phone in a shop where it was being charged he received information that a murder had occurred at his place and that the police and members of the public were looking for him.

12. He became confused and because he was already suspected for the murder of the deceased he proceeded to the police and was held in the police cells. He contended that the deceased was his wife and that they had not been involved in any domestic quarrels. That, the alleged murder weapon was a panga which he had never kept in his house and he could not tell what happened to his dear wife.

13. After due consideration of the evidence in its totality, it is apparent that the fact that the deceased was murdered was not disputed. Indeed, the manner in which the dead body of the deceased was found in a sitting position inside her shop with a very deep cut wound on the neck at the back was a clear pointer that the person responsible for the heinous act had the necessary intention to kill. In actual sense, the deceased was "slaughtered" by a cold blooded human being.

14. There being no dispute as to the commission of the offence, the basic issue arising for determination

is whether the accused was the person responsible for the cruel death of the deceased. Both lived together rightly or wrongly as husband and wife and just prior to the death of the deceased were seen together inside their shop by K (PW1) and D (PW7). Later, a few minutes prior to the discovery of the dead body of the deceased, D (PW7) again saw the accused, this time alone and standing at the gate of their shop while the door to the shop was closed. Shortly thereafter, he left the scene.

15. D (PW7) was the first to see the couple inside their shop. This was about 7.00 am. She later saw the accused alone at about 10.00 am which was at about the same time that K (PW1) had seen the couple together in the shop. This meant that before D saw the accused alone, he had a few minutes earlier been seen with deceased in their shop by K. When D and K saw the deceased and the accused together they were both alive but when D saw the accused alone she could not tell whether the deceased was alive. It was only later thereafter that she heard screams and learnt that the deceased was dead. The accused was not there at the time.

16. It is evident and may as well be stated that the last person seen with the deceased just prior to her death was the accused. He indicated that he was at home on the morning of the material date but said that he left for Eldoret that morning hereby implying that he was not there when the deceased was murdered. He contended that he was not responsible for the murder and indicated that his relationship with the deceased was good and could not therefore understand why she was killed.

17. However, D (PW7) and the mother of the deceased (PW5) alluded to the stressful relationship between the accused and the deceased arising from the fact that they were related and could not therefore enter into a marriage relationship. The investigations officer (PW8) from the facts collected by him from some of the witnesses was of the opinion that the realization that the accused could not marry the deceased because they were related could have led to the circumstances leading to the death of the deceased. The realization of the truth was according to the investigations officer the motive for the murder.

18. The accused being the one left behind by the deceased was thus a perfect suspect for the murder. However, nobody saw him killing the deceased. The suspicion cast upon him could have remained mere suspicion but for the undisputed evidence that he was the last person seen with the deceased when she was alive. This evidence was credible and cogent circumstantial evidence against the accused. It is the evidence on which this case rests and it surely provides inculpatory facts which are incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of guilty [see, ***Simon Musoke -vs- Republic (1958) EA 715***].

19. The chain of evidence against the accused is strong enough to be incapable of explanation on any other hypothesis but the accused's guilt [see, ***Republic -vs- Kipkieng Arap Koske & Another (1949) 16 EACA 135***]. The conduct of the accused of disappearing from the scene after the fact and later presenting himself to the police was a strong indication of his guilty feelings. His allegations that he went to Eldoret and that he presented himself to the police for fear of the members of the public was not the truth. Why would he fear members of the public if he was innocent. He did not present himself to the police to report a threat on his life by members of the public as there was no such threat.

20. The fact that the accused was the last person to be seen with the deceased a few minutes prior to her death was enough to draw an inference that it was him who killed the deceased to the exclusion of any other person [see, ***Joakim Kagonyu Njoki & Another -vs- Republic NBI.Cr.App. 1990 of 2007(CPA)***]. His defence was clearly discredited. The circumstantial evidence against him proved beyond reasonable doubt that he was the cold blooded killer of the deceased by cutting her on the neck with a sharp weapon and with surgical precision. This court finds him guilty as charged and convicts him accordingly.

**J.R. KARANJA**

**JUDGE**

**16/6/2015**

Delivered and signed this **16th** day of **June, 2015**.

In the presence of Mr. Abari for accused and Mr. Kakoi for State.

**J.R. KARANJA**

**JUDGE**

**16/6/2015**