

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 2 OF 2011

REPUBLIC PROSECUTOR

VERSUS

S A.....ACCUSED

RULING

1. **C M M** was attacked in the night of 22/12/2010 and sustained severe injuries. Though she was taken to hospital and received such necessary medical intervention, she succumbed to the injuries on 03/01/2011.
2. As a result thereof, **S A** was arrested and arraigned before this Court on 02/02/2011 facing the charge of the murder of **C M M** who was one of his wives. He denied the charge and a plea of not guilty was entered.
3. The prosecution called four witnesses in support of its case. **PW1** was **No. 45571 PC OWINO ASIN** who was by then stationed at Kakamega Police Station performing general duties. He received a report from one **RAMADHAN** that one **C M** (the deceased herein) had been attacked and injured and rushed to hospital. He booked the report and referred the reportee to Makhungu Police Post for further police action. He learnt of the death of the deceased on 03/01/2011 and that on 04/01/2011 he accompanied the relatives of the deceased to the Kakamega General Hospital Mortuary where they identified the body and he witnessed the post mortem being conducted.
4. **PW4** was **DR. DICKSON MUCHANA** who conducted the autopsy. He confirmed the presence of several healed wounds on the cheek, forehead, back of the forehead and the right leg. He also confirmed a fracture of the inner bone of the right leg had caused a blood clot in the right lung thereby blocking the blood vessels and resulting to the deceased's death. He opined that the death was as a result of a blood clot in the right lung due to a fractured right left following assault. He issued a Burial Permit No. 013063 and filled in the Post Mortem Report which he produced in Court as an exhibit.
5. **F A A** testified as **PW2**. She was one of the deceased's daughters. She stated how she was awoken at night by her mother's screams on being attacked. That was on 22/12/2010 around midnight and she was asleep in a different house but in the same compound. She hurriedly went to her mother's house only to find the doors open and her mother wriggling and crying in lots of pain. Her other siblings also came and they called their father, the Accused person herein. It was her further testimony that her father came without wasting time and called for an Ambulance from Makhungu Hospital which on arrival rushed her mother to Kakamega General Hospital. Her mother was admitted and finally passed on after around three weeks. She explained that her father, the Accused person, was polygamous and on that day he was spending the night with one of his wives. She did not witness the attack on her mother neither did she see anyone at the scene given that she was the first one to reach there.
6. **PW3** was another daughter to the deceased. She was **A A G** then aged 17 years old and in Form 3 at [particulars withheld] Girls Secondary School. She gave sworn testimony. She indeed reiterated what her sister, **PW2** said and confirmed that she did not witness the attack on her mother neither was she aware of who had attacked and injured her mother.

7. With that evidence, the prosecution closed its case. This Court did not have the advantage of the testimony of the Investigating Officer who would have shed some light on how the Accused person was connected with the death of the deceased.
8. There is no doubt that the deceased died. This Court accepts the opinion of PW4, Dr. Dickson Mchana, on the cause of death that it was as a result of an assault. The Post Mortem Report and the Burial Permit confirm the death.
9. The other main issue of determination in this matter and at this point in time is the availability of evidence which tend to connect the Accused person with the death of the deceased. All the witnesses who testified did not witness the attack on the deceased. None of them even linked the Accused person to the death of the deceased even on suspicion. The evidence touching on him is that when he was called by her daughters, PW2 and PW3, he promptly went to the scene and called for an ambulance which took the deceased to hospital. That was all. I am therefore unable to even agree with the defence Counsel that the Accused person was charged on suspicion because I will not have any evidential basis for such a proposition. This Court therefore remains unaware of how S A found his way to this Court to stand trial on the charge of the murder of his wife.
10. I therefore find that there is no evidence that the Accused person herein committed the offence he is facing and it will serve no purpose to even place him on his defence. Pursuant to **Section 306 (1)** of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, I find that the Accused person is **not guilty of the murder of CM M.**
11. The Accused person shall forthwith be set at liberty unless otherwise lawfully held.

DELIVERED, DATED and SIGNED at KAKAMEGA this 30th day of July, 2015

A. C. MRIMA

JUDGE