



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 14 OF 2011**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**MUSOLINI SEZI ..... ACCUSED**

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

1. **Musolini Sezi (herein the accused)** is charged with murder, contrary to S.203 read with S. 204 of the Penal code. It is alleged that on the 2nd February 2011, at Kibosit Farm Trans-Nzoia county, he murdered **Elly Chepchumba**.

2. The case for the prosecution was to the effect that on the material date at about 9.00 p.m, the deceased went to the house of **Sheila Cherotich Ngania (PW3)**, accompanied by her sister called **Everlyn**. She (deceased ) requested that **Everlyn** be allowed to sleep in that house. **Everlyn** remained behind as the deceased returned to her house.

3. However, **Everlyn** only remained behind for a few minutes before returning to the house of the deceased thereby prompting the deceased to return to the house of **Sheila (PW3)** with the intention of sleeping there herself but did not do so. Instead, she left the house and went away only for **Everlyn** to re-appear later and say that she (deceased) had fallen down and was unconscious .

4. Sheila (PW3) and other neighbours including **Eunice Naliaka Johnson(PW2)** proceeded to the house of the deceased and found her lying down while bleeding from the nose and mouth. She was already dead. Her husband, the accused, was present at the scene.

The village elder, **Moses Maende Sabila (PW4)**, received the necessary information from the accused at about 11. 00 p.m. He went to the scene on the following day and thereafter reported to the police.

5. A police reservist, **David Kimchas (PW5)**, was instructed to arrest the accused and take him to the police station. He did so on the **4th October 2011**. **PC Francis Michira (PW6)**, investigated the case,. He proceeded to the scene and removed the dead body of the deceased to Kitale District Hospital Mortuary. His investigations revealed that the accused and the deceased were lovers and that they disagreed and fought resulting in the death of the deceased. He indicated that the deceased's relative **Everlyn**, who was at the scene during the fight disappeared and remains at large.

6. In his defence, the accused denied the offence and started that **Everlyne**, a sister to his deceased wife visited them on **31st January 2011**, and remained with them upto **2nd February 2011**, when she disagreed with the deceased over matters relating to her habit of being seduced by men who often came there to drink traditional liquor (Busaa). The deceased therefore took her (**Everlyn**) to sleep at a neighbour's house but she returned to their house and conversed with the deceased in their own Marakwet dialect which the accused did not understand.

7. The conversation resulted in the deceased being attacked by **Everlyn** and falling down on the ground after which she cried out that she was dying. She bled profusely thereby prompting the accused to seek help from neighbours who arrived at the scene and made attempts to administer first aid but all in vain. The deceased passed away. The accused then reported the matter to the village elder (Mukasa) and his in-laws who later alleged that he had killed the deceased. He was then arrested and charged with the present offence.

8. From all the foregoing evidence, no dispute arises that the deceased passed away as a result of an unlawful act of assault being committed against her.

The post mortem report by **Dr. Blastus Kakundi (PW1)** indicated that the cause of death was severe penetrating chest injury with pericardial and lung involvement with haemothorax.

The basic issue for determination was whether the accused was involved in assaulting and causing fatal injuries to the deceased.

9. The evidence by **Eunice (PW2)**, **Sheila (PW3)** and **Moses (PW4)** did not in any way implicate the accused. The evidence by the police reservist, (PW5) was merely that of arrest of the accused.

It was only the evidence by the investigating officer (PW6) which implicated the accused by implying that the deceased could have been injured in a fight involving her and the accused. However, there was no independent corroborating evidence of the fact.

10. It was apparent that the investigating officer (PW 6) did not carry out any serious investigations such that he resorted to conjecture and to contradicting himself by his suggestion that the fight was between the deceased and **Everlyn** but that the accused intervened.

**Everlyn** was a key witness if not a key suspect yet the investigating officer did not bother to fetch and have her record a statement or face the charge that the accused currently faces.

11. Indeed, **Everlyne** played a major role in the circumstances leading to the cause of the death of the deceased as was shown by not only the accused but also Sheila (PW3) The fact that she disappeared after the death of the deceased and remains at large to this day is sufficient indication that she is the prime suspect in the death of the deceased rather than the accused who has credibly demonstrated why he ought not be held responsible for the death.

12. It is therefore the finding of this court that there was no proof by the prosecution that the accused was involved in assaulting the deceased and causing her fatal injuries. He is thus found not guilty as charged and is hereby acquitted.

**J. R. KARANJA**

**JUDGE**

[ Delivered and signed this 23rd July 2015].