



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO.25 OF 2010

REPUBLIC.....PROSECUTOR.

VS.

E N.....ACCUSED.

JUDGMENT

1. **E K N** the accused herein stands charged with the **Offence of Murder Contrary to Section 203** as read with **Section 204 of the Penal Code**.
2. The particulars are that the accused on the 22nd day of November 2010 at [particulars withheld] Village within Bomet County murdered **C N**.
3. The Prosecution called eight (8) witnesses to prove its case. The accused and the deceased lived as husband and wife with their four (4) young children at [particulars withheld] of Bomet County.
4. On the early morning of 22nd November 2010 PW2 (Grace Bongon) a neighbour to the accused and deceased was woken up by a bang and screams. She went out to check and saw the accused coming out of their house with a blood stained panga.
5. She went near the homestead and on peeping through the fence saw the deceased lying down outside her house with an injury on the head and bleeding profusely.
6. People started gathering and screaming and some stoned the accused. The deceased was rushed to Kaplong District Hospital but she succumbed to the injuries.
7. Other neighbours PW3 & PW5 gave similar evidence to that of PW2. Their daughter PW6 (M C) aged 13 years must have been 9 years when the incident occurred said that morning the deceased was making tea for them in the kitchen as she slept.
8. She was woken up by screams from the kitchen door and she ran out only to find the accused standing at the kitchen door with a panga. People came and beat him and arrested him and carried him away.
9. On this morning she also found her mother at the door having fallen. She had blood on her neck.
10. PW7 Dr. Austin Ombija produced the postmortem report (Exhibit 1). The report shows that the deceased had several deep cut wounds on the head, neck region, left arm. The skull was exposed and the spinal cord was severed.

The cause of death was found to be severe haemorrhage leading to cardiac arrest as a result of cut wounds on the neck & head.

11. PW8 was the Investigating Officer in this matter. He confirmed that the deceased had been injured and was admitted at Kaplong Hospital. He found a pool of blood at the door of the accused's house. A panga with blood had been handed over to them by the area Chief. This panga was taken to the Government Chemist but the report from there has never been received together with the panga.

12. The Investigating Officer found out that the accused had a history of a mental illness. He was taken for mental assessment and vide a report dated 21st December 2010 by Dr. Jamba Joseph a Consultant Psychiatrist it was found that the accused was unfit to plead and defend himself.

13. After treatment he was able to plead to the charge on 13th March 2012 and the case proceeded to full hearing. In his unsworn defence the accused in one breath denied the charge and in another breath denied it. All in all he said never intended to kill or harm his wife. They had been living happily together.

14. This is the case before Court for determination. The evidence on record plus the results of the postmortem (Exhibit 1) confirm that the deceased did not die a natural death. The neighbours PW2, PW3 & PW5 saw her with a cut on the head & lying in a pool of blood.

15. The postmortem report (Exhibit 1) confirms that the deceased had several cut wounds on the head, neck, arm and the skull was exposed. I therefore find that the fact of death has been proved.

16. There was no eye witness to the murder. The incident took place on the early morning of 22nd November 2010. The couple's children were too young though its said one of them was screaming saying the accused had killed their mother.

17. PW2 saw the deceased lying on the ground and the accused emerging with a blood stained panga. PW3 heard the deceased scream and she saw the accused come out of the house holding a blood stained panga. Those who arrived subdued the accused and took away the blood stained panga.

PW6 also said she saw the deceased having fallen at the kitchen door and she had blood on her neck. She also saw the accused standing at the kitchen door with a panga.

18. All this evidence irresistibly points out to the accused as the person who committed this offence of murder.

19. The next issue to determine is whether he had the intention or malice aforethought to kill.

The witnesses PW1-PW6 have all indicated that the couple lived happily together. They had never heard them quarrel or fight.

20. So what may have happened on this day? When he was taken for mental assessment before the plea could be taken, the report dated 21st December 2010 & filed on 7th February 2011 indicated that he was unfit to stand trial. He also had a previous history of being mentally ill. The Doctor recommended that he be placed on medication.

This Mental Assessment Report explains the accused's weird behaviour on the morning of 22nd November 2010. He was not in control of his faculties, and cannot therefore be held to have been responsible for his acts of that day.

21. In the circumstances of this case I make a special finding of guilty but insane under **Section 166(1) Criminal Procedure Code**.

22. A report of this case is hereby made for the Order of the President.

23. The accused shall be kept in custody at Naivasha Maximum Prison, until further Orders by the President are made.

Dated and Signed this 16th day of October 2015.

H.I. ONG'UDI

JUDGE.

Delivered in open court this 23rd day of October 2015.

H.I. ONG'UDI

JUDGE.

In the presence of:

Miss Mwangi for State.

N/A for accused.

Accused – Present in person.

Kenei/Hillary – Court Assistants.

Interbrates: English/Kipsigis.