

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 48 OF 2006

REPUBLIC PROSECUTOR

VERSUS

LIVINGSTONE ANDIKA INYANGALA ACCUSED

JUDGMENT

The accused person is charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence are that the accused on the night of 13.6.2006 at Mariongoyo village, Bubala sub-location, Butere-Mumias district within Western Province murdered **AGNETA ABUNGU INYANGALA**.

The prosecution called seven witnesses. **PW1, RAPHAEL INYANGALA ANDIKA** is the father of the accused and the deceased's husband. It was his evidence that on the 13.6.2006 he was at his second wife's home when PW2 went to inform him that his wife had been killed. He went to his other homestead and saw the deceased's body in the sitting room. The deceased was bleeding from the mouth and the fore-head had a swelling. PW2 informed him that she had just arrived at home and found the body that is why she had gone to call him. PW1 went to inform the area assistant chief (PW3) who informed the police. The body was taken to Kakamega General Hospital mortuary and PW1 was arrested and taken to Butere police station where he stayed for two days before he was released. The witness denied that he had seen the accused assaulting the deceased.

PW2 BEATRICE MASIERA AKULA, was married at the deceased's homestead but her husband had died. The deceased was her mother-in-law. She used to work as a maid out of the compound. On the 13.6.2006 she arrived home at about 6.00 a.m. and found the deceased's body. She went to inform PW1 who informed the assistant chief. The body had injuries at the middle of the head. A stone was later found but it was not near the deceased's body. The accused was not at home as he had left for his place of work.

PW3 CALEB ALWANGA WANDA is the area assistant chief. On the 13.6.2006 at about 10.00 a.m. he was at home when PW1 went to inform him that his wife had been killed by unknown people. He called Butere police station and went to the scene. The deceased's head had been smashed. The police arrested PW1 for further interrogation and the body was taken to Kakamega hospital mortuary. While preparations for the burial were on there was threat on the accused's life and he advised him to go and sleep at his house. On the 15.6.2006 he advised the accused to go and make a statement at the police station since his life was in danger.

PW4 ROBERT WANYONYI is a clinical officer who based at the Butere district hospital. On the 20.6.2006 he treated the accused who had been assaulted. The accused had a blood stained trouser and had wounds on the lower limbs. **PW5 ERASTUS ANDIKA** is the deceased's son. On the 15.6.2006 he attended the postmortem at Kakamega hospital mortuary and identified the deceased's body to the doctor.

IP PIUS SIFUNA was **PW6** and was based at the Butere police station. He got the report of the deceased's death on 13.6.2006 at about 10.00 a.m. from the area assistant chief. He went to the scene and found the deceased lying in pool of blood inside her house. They removed the body and took it to Kakamega Provincial General Hospital. The accused was arrested on 15.6.2006 and later charged with the offence. **PW7 RUTH ASIRA** is the deceased's neighbor. On 13.6.2006 at about 7.00 a.m. she heard

people crying in the deceased's home. She had seen the accused going to his place of work as he normally passes near her home.

The accused was put on his defence. In his sworn testimony he stated that on the 13.6.2006 he left home and went to his place of work at Butere. At midday he was informed that his step-mother had died at home. He went back home and found out that the body had been taken and his father had been arrested. He went to the police station but did not see his father. He went back home and continued with burial preparations. People from the deceased's clan went to their homestead and destroyed their crops. They threatened to burn their house. He went to the assistant chief PW3 and reported. PW3 told him to sleep at his home and in the morning he went with him to the Butere police station and reported the threat to his life. He remained at the station until 16.6.2006 when he was charged. He was assaulted while at the station. He denied that he assaulted the deceased with a stone.

The prosecution case is based on the contention that the accused used to stay in the same compound with the deceased but in different houses. It is also alleged that the accused had a grudge with the deceased as he thought that the deceased had bewitched his wife who had died. According to PW1 he did not see the accused assaulting the deceased using a stone. It is the evidence of PW2 that she arrived home and found the deceased's body in the house. The accused was not there. According to PW3 when PW1 went to report to him he stated that his wife had been killed by unknown people. PW7 saw the accused heading to his place of work. From the evidence on record none of the witnesses saw the accused killing the deceased. It is alleged that the accused confessed to the killing but that information was not produced. There was no confession recorded under section 25A of the Evidence Act. The investigating officer gave evidence that was contrary to that of PW2. According to PW2 a stone was recovered but PW6 denied that fact. It is in evidence that PW1 was arrested and stayed at the police station for 2 days but the investigating officer stated that PW1 was not arrested.

The defence evidence raises doubt on the prosecution case. It is possible that the accused left home for his place of work and the deceased was later assaulted by other people. The accused went back home and was participating with the burial preparations. His life was in danger and he went to report to the area assistant chief. Given the evidence on record I do find that the accused is entitled to the benefit of doubt. The case was not proved beyond reasonable doubt. The accused is hereby acquitted of the charge of murder and shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 18th day of February 2014

SAID J. CHITEMBWE

J U D G E