



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 100 OF 2003

REPUBLIC:..... PROSECUTOR

VERSUS

JULIUS MBOYA BWETETE:..... ACCUSED

RULING

The accused person, **JULIUS MBOYA BWETETE**, was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. He is said to have murdered V M'M between the 6th and the 7th of July, 2001, in Lugari District.

The prosecution closed its case after calling eight (8) witnesses.

Through the said witnesses, it has become clear that the deceased had been sent by her mother to go to the home of their neighbour. The reason why her mother sent her was that she was to buy some vegetables from the neighbour's home.

The deceased was a young girl, aged 11 years. And she was being regularly sent to buy either milk or vegetables at the neighbour's home.

The accused was an employee of the neighbour from whom the family of the deceased used to buy milk and vegetables.

On the material day, the deceased did not return home from the neighbour's home.

The accused has confirmed, through cross-examination of the prosecution witnesses, that the deceased arrived at his employer's home and told him that she had been sent to buy vegetables.

From the evidence on record, it appears that the accused was at home alone, when the deceased arrived.

Ordinarily, the accused, who was the care-taker of his employer's home, would fetch the vegetables for the deceased or any other person who had bought the same. However, the accused did not do so on the material day.

He instructed the deceased to harvest the vegetables, personally.

However, it does appear that that story was not entirely true, as the prosecution witnesses who were shown the vegetable shamba, where the deceased had allegedly harvested vegetables, noted that there had been no harvest.

On a prima facie basis, it does appear that the accused misled the neighbours when he told them that the deceased harvested some vegetables.

When a search for the deceased yielded nothing positive, the police decided that the accused person needed to go to the police station, to record a statement. At that stage, the police had reason to believe that the accused might provide useful information, that could assist them in the search for the deceased.

However, the accused person tried to escape from the police. He is said to have climbed through the roof-top, and to have run-off. But the police pursued him, with the help of members of the public, and apprehended the accused.

The facts confirm that V M'm is dead. The cause of death was asphyxia with severe bleeding, leading to acute cardio-respiratory failure.

The evidence on record proves that the accused person was at the scene of crime. He was the last person to be seen with the deceased.

The body was discovered within the farm where the accused was working on the material day.

Although nobody testified that they saw the accused person kill the deceased, I find that there is sufficient evidence to conclude that the accused person has a case to answer. Not only was he the last person to be with the victim when she was still alive, but he thereafter tried to escape when the police required him to go to the police station, to record a statement. His conduct raised real suspicion of his involvement in the murder, or his knowledge about the circumstances of the said murder.

Accordingly, I find and hold that the accused has a case to answer.

DATED, SIGNED AND DELIVERED AT ELDORET

THIS 30TH DAY OF APRIL, 2014

FRED A. OCHIENG

JUDGE