



**REPUBLIC OF KENYA.**

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

**CRIMINAL CASE NO. 58 OF 2011.**

**REPUBLIC ::::::::::::::::::::::::::::::::::::::::::::::::::::::: PROSECUTOR.**

**VERSUS**

**DAVID WAFULA WEPUKHULU ::::::::::::::::::::::::::::::::::::::::::::::: ACCUSED.**

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

The accused, **David Wafula Wepukhulu**, is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 27th October, 2011 at Rafiki Farm Trans Nzoia County, murdered Grace Nasimiyu.

It was the case for the prosecution that on the material date during the night, the deceased was at her home with her grandchildren including **Metrine Naliaka (PW1)** and **Dorcas Wanyonyi (PW4)**, when the accused went there in a state of anger and intoxication and picked a quarrel with the deceased over claims of witchcraft. In the process, the accused assaulted the deceased using a stick snatched from her. A neighbour, **Daniel Wanjala Khaoya (PW3)**, was attracted to the scene by screams. He found the accused at the doorstep of the deceased's house holding a cooking stick and uttering words to the effect "I will finish all" before jumping over a fence into his nearby home.

The deceased suffered fatal injuries. The police were notified. **P.C. Boaz Bosire (PW5)**, and his team proceeded to the scene and found a mob of people baying for the accused's blood. They rescued the accused and arrested him. They also recovered the cooking stick (P. Exh. 3) and removed the body of the deceased to the mortuary.

Later, the accused was charged with the present offence.

**Dr. Blastus Kakundi (PW2)**, conducted a post mortem on the body of the deceased and compiled a report (P. Exh. 1) indicating that the deceased died from cardiopulmonary failure secondary to severe head injury and cardiac tamponade from blunt trauma.

In his defence, the accused stated that he was a mechanic by occupation and that on the material date he proceeded to work as usual. On his way home in the evening hours, he passed through a traditional liquor selling point before proceeding to the home of the deceased to collect his house key. While there, the deceased became quarrelsome. They argued and engaged in a brawl. Thereafter, he went home only to be called to the police station on the following day and be charged with the present offence. He contended that he did not intend to kill the deceased.

From the foregoing facts forming the prosecution case as well as the defence case, it is apparent that the deceased suffered fatal injuries after being assaulted by the accused following a quarrel between the two. The reason for the quarrel was not clear but since the accused arrived at the scene while annoyed and drunk he may have precipitated the ugly state of affairs which led to the demise of the deceased. He assaulted the deceased using a cooking stick and in the process used more than excessive force thereby causing her death.

He did not deny the fact. His defence was essentially that he did not intend to kill the deceased. This might as well been the case considering that the accused was intoxicated at the time and that his quarrel with the deceased degenerated into a brawl which went physical when the accused took the cooking stick from the deceased and assaulted her with it occasioning her fatal injuries.

The accused ought to have known better than engage in a senseless quarrel and brawl in which he used excessive force on an old and defenceless woman who was his foster mother. What is however certain is the fact that the assault against the deceased by the accused was not spiced with malice aforethought.

Therefore, the prosecution has discharged its burden of proving that the accused killed the deceased by unlawfully assaulting her but in doing so, he was not possessed of the necessary intention to kill.

Consequently, the accused is found guilty of manslaughter contrary to section 202 (1) of the penal code and is convicted accordingly.

**[Delivered and signed this 29th day of May, 2014].**

**J.R. KARANJA.**

**JUDGE.**