

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 36 OF 2009.

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

VERSUS

C L A ::::::::::::::::::::::::::::::::::::::: ACCUSED.

J U D G M E N T

The accused, **C L A**, is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 4th October, in Trans Nzoia West District, he murdered M S.

The case for the prosecution was that the accused and the deceased appeared to have been living together as man and wife and their children included **J A (PW1)**, who witnessed a quarrel between them on the material date which quarrel ended with the accused assaulting and fatally injuring the deceased. On the following date, the accused reported to a village elder, **R W (PW4)**, that the deceased had taken poison. The village elder however, learnt that the deceased had been killed by the accused. Her (elder) proceeded to the accused's home and saw traces of blood. He learnt that the deceased had been taken to hospital. He reported to the police and later saw the body of the deceased at the hospital. He noted that the body had injuries on the hand and head.

The deceased's father, **N N (PW2)**, and sister, **V K M (PW3)**, identified the body for post mortem purposes. The father knew that the deceased was unmarried but had children.

Dr. Paul Njamwe (PW5), performed a post mortem on the body of the deceased and completed the necessary report showing that the cause of death was injury to the head.

P.C. Aggrey Maiyo (PW6), investigated the case and preferred the present charge against the accused.

In his defence, the accused denied the offence. His case was that the deceased was a local brew vendor and on the material date she was in a state of anger such that she chased away her customers and himself. He ran away but she followed him. Immediately thereafter, he heard the children wailing that their mother had fallen down. He attended to her but noting that she was alright, they returned to their house and slept. She woke up on the following morning complaining of feeling unwell. He took the children to school but on his return home found a crowd of people surrounding his wife who was lying on the ground. The people were administering first aid on her. He and neighbours took her to hospital where she died on arrival. He was later arrested and charged with the present offence.

From all the foregoing evidence, no dispute arose with regard to the cause of death which was indicated in the post mortem report to be head injury.

The issue for determination was therefore whether the accused was responsible for inflicting the head injury upon the deceased and if so, whether he acted with the intention of killing her.

The defence was a denial and an indication that the deceased may have sustained injury when she fell down while running after the accused.

However, that line of defence was disproved and discredited by the accused's daughter (PW1) who was very firm that the deceased was hit on the head with a table and club (rungu) by the accused after the two had engaged in a quarrel. This evidence tallied well with the post mortem finding that head injury was

the cause of death and clearly disproved the accused's defence which implied that the deceased suffered head injury due to a fall.

Indeed, the accused was not a witness of truth as demonstrated by the evidence of the village elder (PW4) who indicated that he (accused) had lied to him that the deceased had taken poison. The entire evidence against him left no doubt that he was responsible for the head injury which led to the death of the deceased.

However, it was quite evident that the injury was preceded by a quarrel between the accused and the deceased thereby negating the intention on the part of the accused to kill the deceased. He failed to restrain himself and used excessive force on the deceased. In doing so, he committed the offence of manslaughter as duly established by the prosecution.

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 22nd day of July, 2014.]

J.R. KARANJA.

JUDGE.