



IN THE HIGH COURT AT KAKAMEGA

CRIMINAL CASE NO: 27 OF 2004

REPUBLIC.....STATE COUNSEL

VERSUS

KENNEDY SIMIYU.....ACCUSED

J U D G M E N T

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 he accused *on the 14th day of July 2004 at Mirere village, Mirere sub location, Koyonzo location in Butere-Mumias district within the Western province , murdered **PRISCA MALOBA.***

Before the case started a medical report on the accused's mental status was produced. The accused was found to be mentally unstable. This matter proceeded under **section 162, 163 and 164** of the Criminal procedure code.

PW1 HUMPHREY BOYI testified that the accused is his neighbour. On 14/7/2004 at 7.30 am he heard screams from the accused's sister in law saying that the accused had killed his mother. PW1 went to the scene and found the accused holding a "Jembe"- hoe shouting that he had killed his mother. The accused had crashed the deceased's head. People went to the scene and the accused was arrested. He was later taken to Mumias police station.

PW2 TOM WANJALA BARASA is a brother to the accused. His evidence is that he was working in the shamba on 14/7/2004 when he heard screams from their home. He went there and found out that the accused had killed their mother. He found his mother already dead. They tied the accused with ropes as he threatened to injure other people. It is his evidence that the accused has had mental problems since childhood. He had been beating his children and other people.

PW3 ELIZABETH WANJALA BARASA is a sister in law to the accused. He met the accused on the material day. He was dancing and saying he had killed his mother. The accused then said he wanted to kill PW3 and PW3 ran off. People stoned the accused and arrested him. According to PW3 the accused's mental status started changing as he was growing. On the material day the accused acted like an insane person.

PW4, JAMES WANJALA BARASA is an elder brother to the accused. He heard his wife (PW3) screaming on 14/7/2004 at about 7.00 am. He went there and was told that the accused had killed their mother. He saw his mother's dead body and the head had been crushed. He met the accused who told him to go and see that he had killed their mother. The accused was tied with ropes and handed over to the police. It is the evidence of PW4 that the accused has been sickly and epileptic. The accused is insane. He had no quarrel with their mother. The accused broke the door to his house that morning and chased

away his wife.

PW5 Dr. PAUL MULUPI was based at the Kakamega Provincial General Hospital. He produced three medical reports on the accused's mental status, the first report dated 13/1/2006 was prepared by **DR. KOKONYA**. It does state that accused suffers from mental seizures which affect the whole brain. The condition reduces intellectual performance. The second report dated 7/7/2010 was prepared by PW5. The report states that the accused suffers from epilepsy and does things without his intention. The third report is also by **Dr. Mulupi** and is dated 7/10/2010. The report indicates that the accused is more stable with the fits and had stability. It recommends the accused to continue with medication.

This matter proceeded under **sections 162-164** of the Criminal Procedure Code. I however placed the accused on his defence. In his sworn evidence, he stated that the deceased was his mother. He is epileptic. He had no intention to kill her. He just realized he had killed his mother.

It is clear from the evidence on record that it is the accused who killed the deceased. The medical reports indicate that the accused person suffers from mental seizures which affect his whole brain. He does things without his intention. PW5 recommended that the accused continue with medication.

Given the evidence on record, I do find that it is the accused who killed the deceased. Since the accused's mental status was affected by illness, I do find that there was no intention on the part of the accused to kill the deceased. The accused is not found guilty of the offence of murder but is found guilty of the offence of manslaughter contrary to **section 202** as read with **section 205** of the **Penal Code**. The accused is guilty of the offence of manslaughter but he was insane when he committed the offence.

In the end, the accused is found guilty of the lesser offence of manslaughter but he was insane. In line with **section 166** of the Criminal Procedure Code, I do order that the accused be kept in custody at the Kakamega prison for an order from the President of the Republic of Kenya under **section 166(2)** of **Chapter 75**. The prison authorities to notify the Office of the President of this finding, so that the other legal procedures can take effect.

Dated and delivered at Kakamega this 23rd day of September 2014

SAID J. CHITEMBWE

J U D G E