



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL CASE NO. 46 OF 2009
REPUBLIC
VERSUS
DOROTHY MBINYA.....ACCUSED

J U D G M E N T

1. The Accused, **Dorothy Mbinya**, is charged with two counts of **murder** contrary to **section 203** and **204** of the **Penal Code**.

In the first count, the particulars of the offence are that on the night of 14th and 15th day of June 2009 at **Kanyonga village, Ivinganzia Sub-location** in **Makueni District** within the **Eastern Province** murdered **Victoria Mbula**.

In the second count the particulars of the offence are that on the night of 14th and 15th day of June 2009 at **Kanyonga village, Ivinganzia Sub-location** in **Makueni District** within the **Eastern Province** murdered **Irene Wanza**.

2. The prosecution case is that the accused and her two children lived with her husband's family in **Makueni area**. The husband, PW3 **Isaac Muoki** worked away from home. According to the prosecution case, the accused had two children prior to getting married to PW2. That the children were not the husband's biological children. There was domestic strife and the accused left her matrimonial home for five days.

3. On the material day, the accused and her husband and husband's family met and discussed the matter. It was agreed that the accused and her children were to go back to her parents' home. The accused and her children were escorted back to her parents' home by the husband's brother, **PW4 Meshack Mutuku**. They found the sister and grandmother to the accused at home. The following day, the two children were found having been hanged on a tree. The matter was reported to the authorities. The bodies of the two children were taken to the mortuary. After investigations the accused was charged with the offence herein.

4. In her defence, the accused denied the offence. The accused stated that she lived at her husband's home with her two children and the extended family while the husband worked in **Nairobi**. The accused stated that she had differed with her mother in law. That on 14/6/2009 they had a family meeting but their differences escalated. That the following morning she left for her parents' home without the children. The accused further stated that the husband was the biological father of the children. The

accused further testified that she never saw the children again and knew nothing about the recovery of their bodies.

5. From the evidence of PW1, **Joshua Muia** the family patriarch, PW2 **Agnes Mukui** the family matriarch, PW3 the husband to the accused and his brother PW4 **Meshack Mutuku**, it is abundantly clear that the accused and her two children left the matrimonial home on 14/6/2009 and went back to the parents' home where they arrived at about 10.00 p.m.

6. What transpired after the accused was left at her parents' home is not known. The grandmother and sister to the accused who were said to have been with the accused at her parents' home on the material day were not called to testify. These were crucial witnesses who could have shed light on what transpired. In the absence of the evidence of the said grandmother who is said to have identified some pieces of cloth found at the scene and also pointed a figure at the accused as the person who left home at the middle of the night in the children, that evidence is mere hearsay.

7. The other witnesses who have testified herein are PW6 **Gideon Kasyoki Kiswii** who identified the body, PW7 **PC Joseph Mutia**, PW8 **Dr John Kinyanjui**, and PW9 **PC Edgar Kibet** are formal witnesses. Their evidence is of no probative value.

8. The accused has denied the offence. I would give the accused the benefit of doubt. Consequently, the accused is acquitted under **section 306 (2)** of the **Criminal Procedure Code**.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 27th day of November 2014.

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JUDGE