



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Criminal Case 24 of 2005**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**ALFAYO MURWA.....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 the accused on the 25<sup>th</sup> day of April 2005 at about midnight at Machanja village, Mugai sub-location, Shirugu location in Kakamega District within Western Province, murdered FAITH KHAVALI.

The prosecution case is that the deceased had been married to the accused and had lived together for a period of about four months. The deceased died of a head injury and it is the prosecution case that it is the accused who had inflicted that injury. **PW1, PHEMINA MWAYITSI MUSUMBA** testified that the deceased was a second born child. She used to work as a hairdresser at Malava. PW1 had heard that she was married but she did not know the husband. On the 25<sup>th</sup> of April 2005 at about 4.00 p.m. she got information that her daughter had died. She went to the Malava police station where she met her relative PETER SHISAMBULA (PW2) who had already made the report. They went to the scene with police officers at EMUCHANJA village. They found the deceased lying on a cloth and there were many people at the scene. The police removed the body to Kakamega hospital mortuary.

PW2, PETER SHISAMBULA, was informed about the death of the deceased on 25<sup>th</sup> April 2005 at 12.00 noon from bodaboda cyclist. He went to the accused's house and saw the deceased lying on her back with an injury on the head. There were many people outside the house and the accused's mother was present but the accused was absent. According to PW2 the deceased had been married to the accused for a period of four months. He went to report the incident at Malava police station. They went back to the scene with police officers who took the body to Kakamega hospital mortuary.

HASSAN MUSUMI, was PW3 and was the assistant chief of Mugai sub-location. On the 25<sup>th</sup> of April 2005 at about 2.30 p.m. he was in his office when a woman by the name MISPA NAMUKHOSI (PW5) went to inform him of the sudden death of the deceased. PW5 informed him that the deceased was her daughter in-law. PW3 went with PW5 to Malava police station where they made a report. They went with police officers to the scene and found the deceased's body lying on the floor in the bedroom. The police took the body to Kakamega mortuary.

PW4, PC DANIEL OWINO ASIN. He was stationed at the Kabras police station and on 25<sup>th</sup> of April 2005 at about 3.20 p.m. MISPA NAMUKHOSI (PW5) went to report about the death of her daughter in-law. He was informed that PW5 had arranged to take the deceased to hospital but she died on the way. MISPA was in the company of PW3 Hassan Musumi. He went to the scene with Mispa and PW3 together with other officers. They found the deceased lying in the middle of a room on a blanket spread on the floor. He did not observe any injuries on the body and took the body to Kakamega mortuary. A post mortem was conducted and the doctor indicated that the deceased had died out of an injury caused by a blunt object. The accused was arrested on the 27<sup>th</sup> of April 2005 at Mutua village in Lugari district, a distance of about 70 kms from his home. PW4 further testified that no exhibits were recovered and he formed the opinion that the accused had to explain his absence yet the deceased was his wife. The accused's mother informed him that the deceased had been married to the accused for a period of two

weeks. He was also informed that PW5 had tried to take the deceased to hospital.

PW5, MISPA NAMUKHOSI MAKOKHA, testified that the accused is her son and the deceased had been married to the accused. On the 25<sup>th</sup> of April 2005 at about 9.00 a.m. she was in her house when the deceased informed her that she was feeling unwell. Since the deceased had stayed with her for a period of two weeks she did not know her ailment. PW5 sent someone to call her two other children with bicycles so that they could take the deceased to hospital. At that time the accused had gone to do his jua kali work. A neighbor by the name MUKHWANA went to help her and at about 11.00 a.m. the deceased was put on a bicycle and they left for hospital. After having gone for about 4 kms. the deceased died at Makuyu market. People helped PW5 carry the body to her home. She sought help from the area assistant chief so that they could trace the deceased's home. The assistant chief went with her and confirmed the death and thereafter the two went to report at the Malava police station. The police went to the scene and removed the body.

PW5, further testified that the accused went home that night and she informed him that his wife had passed on. She asked the accused to look for money from his uncles for purposes of the funeral. On 27<sup>th</sup> of April 2005 PW5 went to the Kakamega hospital mortuary and identified the body for post mortem purposes. The deceased was buried on 29<sup>th</sup> April 2005 but the accused did not attend the burial as he had been arrested on 27<sup>th</sup> of April 2005. According to PW5 the deceased died in her hands. The accused left his house on 25<sup>th</sup> April 2005 in the morning. The deceased went to take tea at her place and she did not inform PW5 that she had disagreed with anybody. When the deceased went to her home she hit herself against the wall near the door frame.

The accused was put on his defence. In his sworn testimony he stated that on the 24<sup>th</sup> of April 2005 the deceased fell sick. She had malaria and was vomiting. They went to the local dispensary but did not get the doctor and they went back home. They took supper and slept. In the morning the deceased was still sick and told him that she was in pain. He had no money and went to look for his aunt for assistance. He found his aunt planting maize and he assisted her. It rained and he slept at his aunt's place. He went home on the 26<sup>th</sup> of April 2005 and his mother informed him that his wife had passed on while being taken to hospital. He went to Malava police station and he was told the investigating officer was not there. He decided to look for money and went to his uncle's place. While there the police went and arrested him. That was 27<sup>th</sup> April 2005. He stayed at the police cells for three months and he was later charged with the offence. It is the accused's evidence that he had lived with the deceased for a period of two weeks and she used to take alcohol. The deceased had several scars on her body.

From the prosecution evidence no one saw the accused assaulting the deceased. According to PW4, the investigating officer the accused was charged with the offence because he was not at home when the deceased died and that according to the post mortem report the cause of death was an injury to the head caused by a blunt object. It is the evidence of PW5 that she was informed by the deceased that she was unwell. PW5 organised to take the deceased to hospital but she died on the way. PW5 is the accused's mother and went to inform the area assistant chief about the incident. She also went to report the matter at the Malava police station.

It is the prosecution evidence that the deceased was married to the accused. According to PW2 the deceased had been married to the accused for a period of four months. According to the accused he had lived with the deceased for a period of two weeks. The prosecution evidence is purely circumstantial. There is no reason to doubt the evidence of PW5. She informed the investigating officer that she had tried to take the deceased to hospital. She gave the same information to the area assistant chief. The fact that the post mortem report indicate that the cause of death was an injury to the head caused by a blunt object does not automatically mean that it is the accused who inflicted the injury. It is in evidence that the deceased was unwell. According to the accused his house is located away from his mother's house. It is possible that the deceased could have fell while heading to PW5's house. It is the evidence of PW5 that the deceased hit her head against the wall.

In the end I do find that the prosecution has not proved its case beyond reasonable doubt. There is no

direct evidence connecting the accused with the offence. There is no indication that the accused had intended to kill the deceased. The evidence of PW5 explains how the deceased met her death. The accused is hereby acquitted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The accused shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 31<sup>st</sup> day of January, 2013

**SAID J. CHITEMBWE**

**J U D G E**