



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Case 47 of 2010**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NELSON KIMUTAI NGENO.....ACCUSED**

**JUDGMENT**

Although the accused person has denied that the deceased was his wife, I find sufficient evidence from which it is clear that the deceased was indeed his wife.

It is the prosecution case that on the 9<sup>th</sup> May, 2010 at about 8.30p.m., Bernard Kiprotich Rono (Rono) heard the accused screaming. Rono ran towards the direction from where the screams were coming and upon reaching there, found the accused assaulting the deceased. The two were drunk, according to Rono. After Rono separated them, the accused helped him to carry the deceased home.

The next morning, the accused went to Rono's home to report that the deceased was in a bad state of health. The accused in the company of Rono, Rono's mother and brother went to where the deceased person's house where they found the deceased dead. The accused was handed over to the police while the body of the deceased was moved to the mortuary.

According to the post mortem report, the deceased who suffered multiple bruises and a fracture of the right side of the chest, died as a result of cardiopulmonary collapse secondary to severe head injury and resultant haemorrhage, shock and brain injury.

The accused person denied inflicting the fatal injuries on the deceased. He explained that he had no relationship with the deceased save that he gave her a piece of land to plant maize.

On the day in question, the deceased who was drunk went to the accused person's home screaming and saying that she had been attacked by certain persons. The accused allowed her into his house and offered her milk. The following day the accused left the deceased in his house but when he returned later he found her dead.

From the foregoing evidence it is common ground that the deceased died as a result of the multiple injuries. In view of the accused person's defence that he did not inflict those injuries, the two broad questions to be determined are whether or not the accused person indeed inflicted the fatal injuries and if he did so, whether or not he did so with the intention of causing death or doing grievous harm to the deceased.

Although the incident took place at night (8.30pm), I have no doubt that, given the fact that the accused and Rono are related, there was no mistake in his recognition. Rono spend considerable time with the

accused and the deceased at the scene. He even helped the accused to carry the deceased to their house.

Rono got to the scene as the accused was hitting the deceased with sticks which were recovered at the scene and produced as exhibits in this trial. It was Rono's evidence that the accused was beating the deceased "*all over.*"

The post mortem report confirmed that the deceased suffered multiple bruises which are in consonance with Rono's description of the attack. For the foregoing facts, I come to the conclusion that the accused inflicted the multiple fatal injuries on the deceased. The next question is whether in so doing, the accused had malice aforethought.

There is evidence that both the deceased and accused person were drunk. The deceased lay down as she was being beaten. The accused explained to Rono that he was beating the deceased because she had refused to go home with him. The deceased for her part told Rono that the accused was beating her for no reason. There is also evidence that the two had no marital problems before this day.

It is therefore apparent to me that the accused in his drunken state only wanted to force the deceased to go home and in the process used excessive force. Had he intended to deliberately harm the deceased, he would have used the sword which he was carrying. Instead he used sticks.

**Section 13(1)** of the **Penal Code** provides as follows:

**"13(1). Save as provided in this section, intoxication shall not constitute a defence to any criminal charge."**

**Section 13(4)** further provides that:

**"13(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence."**

In view of the fact that the accused was drunk and therefore was incapable of forming any intention of causing the death of the deceased. I come to the conclusion that he can only be guilty of manslaughter.

In the result, I find the accused guilty of **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. He is accordingly convicted.

**Dated and Signed at Nakuru this 17<sup>th</sup> day of January, 2013.**

**W. OUKO  
JUDGE**

**Dated, Signed and Delivered at Nakuru this 31<sup>st</sup> day of January, 2013 by Hon. Justice M. J. Anyara Emukule.**

**JUDGE**