



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**Criminal Case 79 of 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**CAROLINE AUMA NABWIRE.....ACCUSED**

**JUDGMENT**

The accused and the deceased lived together as man and wife. They had one child. On the night of 13<sup>th</sup>/14<sup>th</sup> July, 2010, the two had some differences and fought. The only eye witness to the fight was their eight (8) year old daughter, who described how in the course of the fight the deceased picked up a bottle and cut the accused person on the hand; that he also cut the accused person on the shoulder using a knife. A neighbour to the couple, Cyprian Kisaka Kilonzo heard screams from the couple's house. Together with their landlady, Felicia Njoki Karanja, they went to the house where they found the deceased and accused person fighting.

They noted that both had injuries. Because it was late, it was agreed that the two would go to the hospital the next day. The next morning, the accused went to the police station to report that she had been assaulted by the deceased. As she returned home, she met members of the public who attacked her and inflicted serious injuries on her claiming that she had killed the deceased. She was rescued from the mob by the police.

The body of the deceased was moved to the mortuary where a post mortem was performed. The doctor noted a single stab wound to the left chest which caused massive haemorrhage as a result of which the deceased died.

In her defence, the accused told the court how the deceased was planning to rob a neighbour's shop on the material night. She declined to accompany him and after persuading him against it, the deceased became annoyed but nonetheless tried to leave the house to fulfill his mission. As the accused tried to stop him, a scuffle ensued in which the deceased hit her with a "jiko" and two beer bottles. He also stabbed her with a knife. In the course of that fight, the two fell down and in the process, the knife which the deceased had pierced him. The neighbours returned as a result of the commotion. It is at this stage that the accused person realized that the deceased had sustained a stab wound on the chest.

From the foregoing explanation of events of the night in question, there is no doubt that the deceased sustained a single chest injury in the course of a fight with the accused person. It also appears to me from the evidence of the couple's eight (8) year-old daughter that it was the deceased who started the fight. Her explanation of how the deceased attacked the accused person was corroborated by the evidence of the neighbour, Cyprian Kisaka Kilonzo and the landlord, who arrived at the scene as the two were still fighting.

The facts being that clear, the only issue to be determined is whether the single fatal stab was inflicted by the accused and if so whether she had malice aforethought. No doubt the deceased was the aggressor in the circumstances of this case. Apart from using bottles to attack the accused person, there is evidence that he also stabbed her with a knife. It is therefore safe to conclude that he had the knife.

I am however, not persuaded that the knife stab on the deceased was caused when he fell on the knife which he is said to have been holding. In my considered view, the accused picked the same knife and with it stabbed the deceased. It is that stab that caused the deceased person's death. It is plain to me that the

accused person did not have malice aforethought but only acted in self defence.

For that reason, I find that the evidence presented only discloses the offence of **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code** with which she is hereby convicted.

**Dated, Signed and Delivered at Nakuru this 27<sup>th</sup> day of July, 2012.**

**W. OUKO**  
**JUDGE**