

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE 2 OF 2011

REPUBLIC.....PROSECUTOR

~VRS~

PHOEBE NASIMIYU NAMUTEMBI.....ACCUSED

JUDGMENT

The accused Phoebe Nasimiyu Namutembi was charged with murder contrary to sections 203 and 204 of the Penal Code whose particulars were that on 21/1/2011 at Nyange village in Mbakalu location of Bungoma County murdered Linda Vundembu Ambula. She denied the charge and was represented by Mr. Kraido. M/s Leting State Counsel conducted the prosecution.

The deceased was the daughter of George Noyh Ambula (PW1). She was undertaking a diploma course at a college in Eldoret but her home was in Tongaren. On 13/1/2011 she left home to go back to college. She reached college and paid part of the fees that she had been given by her father and secretly came back to apparently go and see her boyfriend, one Alex, with whom she had been in the college the previous year. Unknown to her father, she was expectant. This is because on 21/1/2011 at about 5.00 a.m she was brought to the clinic of Henry Khaweri Buyoywa (PW2) at Nyange by the accused who was a traditional birth attendant. She was in a desperate condition as she was bleeding profusely, her temperature was subnormal, she could hardly breath and her pressure was nil. PW2 put her on I.V. and gave egometrin. He examined her and found she had a coil which appeared to have been disturbed as it was coming out. The deceased appeared to have an induced abortion. In the process of trying to contact the deceased's parents she died. When PW1 arrived she had died. PW2 had not met the deceased before. The accused told him that the deceased had

“aborted a 3 months foetus.”

The accused kept quiet in defence and did not call witnesses.

The prosecution did not call evidence to show the deceased's cause of death. It would have been useful had the accused testified to say where she had found the deceased and in what circumstances. However, the duty to call evidence to show beyond doubt that the accused murdered the deceased rested with the prosecution and did not shift. Did Alex make her pregnant? Did she try to abort? Did the fact that she had a coil when she became pregnant present a complication? Did she go to the accused for assistance? Was it before or after she had begun to abort? Did she take drugs to induce an abortion? Did the accused merely seek to help her by taking her to PW2 for medical attention? It was up to the prosecution to answer these questions and to show that the accused was responsible for the death. That was not done.

In conclusion, I find that the accused's guilt was not proved. She is consequently acquitted under section 215 of the Criminal Procedure Code.

Dated, signed and delivered at Bungoma this 23rd day of July 2012.

A. O. MUCHELULE
JUDGE

