



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MURDER CASE NO.14 OF 2007

REPUBLIC.....PROSECUTOR

VERSUS

ALEX ELIJAH OGOLLA KAKATA.....ACCUSED

R U L I N G

The accused, Alex Elijah Ogollah Kakata, was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The charge stated that on the night of 23rd February, 2007 at Bulanda village in Busia Township, he murdered Patrick Wandera Ogolla.

The prosecution facts show that the accused is the father of the deceased. On the material night, the deceased came home and found his father quarrelling with his younger wife in his own house and tried to intervene between them. Instead his father insulted him and accused him of seducing the father's younger wife with whom the father was then quarrelling. The deceased left the father's house and returned to his own house. Unfortunately, the father who is the accused, followed the deceased to the latter's house. When the son tried to prevent his father from entering the house his father, the accused allegedly stabbed the deceased with a sharp object on the left side of the chest.

Later the son, herein the deceased, almost collapsed as he complained of pain in the chest. He was taken to Busia Hospital on a bicycle and was admitted. A week after, he was transferred to Kakamega Hospital where he was re admitted after passing through Busia police station and writing a statement complaining that his father the accused, had stabbed him. The deceased's condition deteriorated in Kakamega Hospital and he died on 13.3.2007.

The critical evidence came from the deceased's wife, PW2 Asha Kadogo Kakaya. She testified that the accused followed the deceased to their house and stabbed him with a sharp object. She also in cross-examination admitted that she did not see the accused actually stab the deceased, except she heard the accused scream so. She again said that she saw a stab wound on the right side of the chest immediately after the accused stabbed the deceased. She also testified that the deceased while at the hospital complained of chest pain. She further claimed that it was while the deceased was in hospital that an Administrative Police Officer told her to go and find out whether the deceased had an injury and when she checked, she saw the injury.

There was also some evidence from PW4, No 69299, PC Kennedy Lumbembe who was the investigating officer. He testified that he visited the deceased in Busia hospital and saw him bandaged on the left part of the chest. He concluded that the deceased had an injury on the left chest which must have been the one inflicted by the accused. He further testified that when he went to the deceased's house, he saw blood stains at the main door.

The doctor who performed the postmortem on the body of the deceased was Dr. Bernard Oburu Oleka on 14.3.2007 – two days after death. He externally saw pus draining through deceased's nostrils. There was a scar on the left chest and another on the right shoulder. He noticed that the right lung had collapsed and pus was seen in the right chest. The heart was enlarged and there was blood covered fat in the left ventricle. The cause of death was established to be cardiopulmonary arrest due to respiratory distress secondary to pus in the chest caused by lung collapse. The doctor concluded that the death was natural since it was caused by pneumonia infection.

I have carefully considered the prosecution evidence. If the cause of death was pneumonia and that it was natural, that means that any possible injuries that the accused may have inflicted on the deceased did not contribute to his death.

Secondly, the evidence by PW2 and PW4, do not appear to be true. PW2's evidence that she saw the accused inflict injury on the deceased was not supported. It is highly unlikely that the deceased received any stab wound from accused without showing any bleeding immediately or even later. Indeed she even later admitted that she had later to be prompted by an Administrative police officer to go and see if deceased had a fresh injury as he lay in hospital. Her claim that she saw one is not credible.

As to the evidence of PW4, PC Kennedy, his evidence as an investigating officer was useless. He never confirmed the injury. He could only claim that he saw a bandage on the deceased and concluded the bandage covered a wound. His claim that the deceased had a stab wound, was unfounded.

Finally however the doctor ruled out the claim that the deceased had any fresh or recent stab wounds.

For the above reasons, I find no reason to place the accused on his defence. I find that no sufficient case has been made up against him to require him to answer. I acquit him forthwith and order that he be released from prison unless he is, therein, lawfully detained.

Orders accordingly.

Dated and delivered at Busia this 12th day of July 2011.

D.A. ONYANCHA

JUDGE