

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Murder Case 93 of 2008

REPUBLIC.....PROSECUTOR

VERSUS

A L.....ACCUSED

JUDGMENT

The accused person, A L, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars as set out in the information is that on 13th August, 2008 at Logethei village, Samburu, he murdered his wife, A E N. It was the prosecution case that the accused had asked their seven (7) year-old child (P.W.3, N) to take the goats out of the boma but the deceased intervened saying he (the accused) was disturbing the child.

This did not please the accused who, using a wooden plunk with a sharp metal end, hit the deceased on the head. The deceased fell down and upon gaining consciousness, she left for her mother's home with N. At her mother's home, her siblings, P.W.1, S AandP.W.2 N N (N) arranged, due to her head injury, to take her to the hospital. She subsequently succumbed to the injuries and died. Dr. Mutai who was away on leave at the time the matter came up for hearing, performed the post mortem examination on the body of the deceased after being identified by P.W.4, Mathew Eyanae. The postmortem report was produced by P.W.5, Dr. Kuria John Karina (the doctor).

According to the post mortem report, the body had a depression at the back of the head and skull was fractured. It was the doctor's opinion that the deceased died as a result of cardiopulmonary arrest as a result of hemorrhage. P.W.6 Raphael Lolit arrested the accused who was subsequently charged with this offence. In his sworn defence, the accused explained that he asked Nachimo and the deceased to assist as the goats were leaving the "boma". The deceased refused telling him not to disturb Naand instead should ask his sister's children to help him. As the accused sat he noticed the deceased holding the wooden pluck with a metal end aiming it at his stomach. The accused held the wooden plunk and a struggle ensued. In the process the accused sustained a cut on the finger. The deceased on seeing this injury on the accused ran away. As she ran she slipped, fell and hit her head on the wall. She packed and left for her mother's home.

That is the evidence by both the prosecution and the defence. There is medical evidence that the deceased sustained a fracture of the skull caused by a blunt object. It is also in evidence that the accused and the deceased had disagreed over their child N and that a scuffle ensued. What is not common ground is how the deceased sustained the head injury.

According to the prosecution case, the accused hit her on the head. N who was the only eye witness gave sworn evidence after I was satisfied as to her intelligence and appreciation for the need to give truthful testimony. She told the court that after the deceased told the accused not to bother the child, the latter hit her (the former) twice with the wooden end of the plunk. The day following the attack, the deceased and N left for the deceased person's mother's home. According to the witness who saw her immediately she arrived at her mother's home, the deceased appeared well and had indeed taken herself there. She even talked to N. It was the evidence of N that the deceased explained to her how she had fought with the accused who in the course of the fight hit her on the head. N further told the court that on the day of the incident N went to her (at the deceased person's mother's home) and reported to her that the deceased and the accused persons had fought.

Although the accused in his defence did not state expressly that there was a fight, he admitted that there was a scuffle when he was disarming the deceased. He, however, attributes the deceased person's head injury to a fall. The doctor confirmed that the head injury was consistent with a fall or attack with a blunt object.

While N impressed me as an intelligent and consistent witness, her testimony that the accused person simply hit the deceased on the head is put to doubt by what she is alleged to have told N on the very day of the accident, namely, that the deceased and the accused persons fought. This evidence is consistent with the accused person's version of the events. In the result, I come to the conclusion that there was a fight and give the accused person the benefit of doubt that it is the deceased who, armed with the wooden plunk, intended to attack him. It is also consistent with the evidence that after succeeding in disarming her, he hit her with the same plunk. To that extent, the accused person's defence is displaced.

In the circumstances, I come to the conclusion that the offence disclosed by the foregoing facts is that of manslaughter under section 202 as read with section 205 of the Penal Code.

The deceased refused to help the accused person with the goats, or even let N help. She then appeared armed with a wood plunk with the sharp metal end aimed it at the accused person's stomach. A combination of the deceased person's defiance of the accused and her intention to attack him caused the latter act towards the deceased in the manner he did.

I find the accused guilty of manslaughter and convict him accordingly.

Dated, Signed and Delivered at Nakuru this 5th day of February, 2010.

W. OUKO

JUDGE