



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Case 54 of 2009

REPUBLIC PROSECUTOR

VERSUS

SUSAN KAHINDIACCUSED

JUDGMENT

The accused **SUSAN KAHINDI** is charged with **Murder** contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 1st day of June, 2009, at Kawangware 56 in Nairobi West District within Nairobi area Province, the accused unlawfully murdered **ISAIAH MUTWIRI**.

The facts of the prosecution case are that the deceased **ISAIAH**, one **RHODA** (P.W.1) and one **MWENDE** (not called as a witness) were sleeping in the same house on the material day of 31st May, 2009. At 10 p.m. the same night, the accused came knocking on the door. **Mwende** is the one who woke up from the bed, lighted a candle and wrapped a towel around her waist before opening the door. The accused is said to have entered the house, gone straight to where utensils were kept and picked a kitchen knife. She was seen by **RHODA** tucking the knife away in her waist area. The accused then ordered the deceased to wake up and explain who were in the house with him. It is **RHODA**'s testimony that when the deceased did not answer, the accused picked a thermos flask and crushed it to the ground. **RHODA** stated that the accused also picked a Television set in the room and threw it to the ground also breaking it. **RHODA** testified that it was at that point that the deceased woke up from bed with a towel around his waist. **RHODA** stated that when the deceased wore trousers the accused made the following remarks "**You have worn the trousers to kill me. Kill me now so that my mother will hear you killed me your wife**".

RHODA testified that he deceased pulled the accused outside the house whereupon **Rhoda** (P.W. 1) and **Mwende** locked themselves in the house. **Rhoda** testified that after some time the accused started knocking at the door of the house ordering them to open. **Rhoda** stated that they did not open until they knew that neighbours who had been attracted to the scene had the accused under control.

(P.W.2) **PETER NGIGE** was the caretaker of the plot of houses where the deceased was living at the time of the incident. **Peter** testified that while in his house at the plot on the material day, he was attracted by noises from the accused. **Peter** stated that after trying to calm down the accused without success, he took the accused to the gate and ordered the watchmen not to let her in. **Peter** stated that the accused had pointed at House No.10 saying that there were prostitutes in that house and accusing him of locking them with people's husbands.

Peter clarified that House No.10 at the plot he managed belonged to one **Patrick** and that he, **Patrick**, had lived in that house for 3 months and prior to that in another room at the same plot for 8 months. **Peter** said that the deceased had gone to live with **Patrick** (PW4),

not long before the incident. **Peter** stated that after taking the accused outside the plot, he went to House No.10 and asked the people inside to open. **Peter** said that when the door was opened, there were two girls in the house and that because they claimed that someone had been stabbed, he persuaded them to go to the gate with him in order to find the injured man. **Peter** stated that they obliged and that on going to the gate, they found the accused outside the gate and that she was saying that she had stabbed her husband because he had slept with a niece. **Peter** said that he saw the deceased lying on the ground 100 meters from the plot and that he was bleeding from a wound on the neck. **Peter** said that the Police had come by the time he went to the gate to check on the deceased and that since he was still alive the police called for a vehicle to take him to hospital.

It was **Rhoda** and **Peter's** evidence that Police officers who came to the scene and caused the deceased to be taken to hospital also arrested the accused and **Rhoda**. **Rhoda** testified that **Mwende** who had said that she was going back to the house, disappeared completely at that point and was never seen again. **Rhoda** and the accused were taken away by Police Officers and locked up in Muthangari Police Station cells. One and a half weeks later **Rhoda's** statement was taken and she was released.

PW3 was **DIBORAH MUTHONI** who told the Court that she was sharing a house with the accused since March, 2009. She testified that on 31st May, 2009 the accused carried the house keys and left her in their house at 1 p.m. **Diborah** testified that she left their house to visit her brother that afternoon and that when she returned that evening, she could not enter the house because the accused had the keys. **Diborah** testified that the accused never returned to the house that day and that she later learnt that the accused had been arrested.

PW4 was **PATRICK KINYUA** who told the Court that he knew the accused because they came from the same village. **Patrick** stated that the deceased was from his Division. **Patrick** stated that the deceased, **Isaiah Mutwiri** was his house mate at Kawangware 56 since February, 2009 upto the date in question. Prior to that, **Patrick** said that he discovered in August 2008 that the accused and the deceased were living together as man and wife. **Patrick** said that the two continued to live together until February, 2009 when the deceased requested him to allow him share his house with him because he had disagreed with the accused. **Patrick** testified that on 30th May, 2009 which was a Saturday, he left the deceased in his house and went to visit his family at home. **Patrick** said he was still at home on 1st June, 2009 when **Diborah** (PW2) who came from the same village and who lived with the accused called, him. **Patrick** said he knew of the death of the deceased and of the arrest of the accused from **Diborah**.

PW5 FRED NYAGA and **PW6 JAMES MUGAMBI** identified the body of the deceased to the Doctor who performed the post mortem examination.

PW7, DR. NJAU MUNGAI, was the Doctor who carried out a post mortem examination on the body of the deceased. The post mortem was carried out on 4th June 2009. **Dr. Mungai** told the Court that his examination revealed that the deceased had had the major blood vessels on the left side of the neck severed. He testified that there were no features of struggle both in the neck and on other parts of the body. **Dr. Mungai** testified that he formed the opinion that the cause of death was massive haemorrhage due to severed neck blood vessels. **Dr. Mungai** stated that the injury was a stab wound. The post mortem report was P EXH.1.

PW8 was **CPL. WALI**. **Cpl. Wali** stated that he was instructed to investigate the case by the OCS Muthangari Police Station, one day after the incident. He told the Court that he was able to recover the knife used in the incident, one day after the incident but that he did not take it for analysis because it had been interfered with. **Cpl. Wali** also stated that the scene of incident, which he visited long after the incident, yielded no results due to interference.

PW9 was **DR. ZEPHANIAH KAMAU** who examined the accused on 8th June, 2009. He said that following his examination, he formed the opinion that the accused was of sound mind. **Dr. Kamau** assessed the accused age as 26 years old. He stated that he found no physical injuries on her.

After the close of the prosecution case the accused person was placed on her defence, in exercise of **section 306 of the Criminal Procedure Code**. The accused opted to give a sworn defence and not to call any witnesses.

In her defence, the accused contended that the deceased was her husband and that on the material day, she went home at 10 p.m. only to find him with two girls. The accused stated that when the door was finally opened for her, a quarrel and later, a fracas ensued during which time the two women roughed her up. She claimed that when the deceased intervened to stop especially one of the women who had been in bed with him from beating her, the deceased and the woman left the house arguing with one another. The accused stated that she was left behind with the girl who had been sleeping on the ground and who had opened the door for her. She stated that the two of them were separated by the son of the landlord (**Peter**) who also forced them out of the house. The accused stated that before she could leave as ordered by the son of the landlord, Police came to the scene and arrested her and the girl. The accused stated that she could not tell who caused the death of the deceased.

Mr. Swaka for the accused and **Ms. Macharia** for the State made submissions in the case, at the close of the prosecution case. I have considered the submissions by both counsels. I have also carefully analysed and considered the evidence adduced in this case both by the prosecution and by the defence.

The charge facing the accused is ‘**Murder** contrary to Section **203 of Penal Code.**’ That section provides as follows:

“203. Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

The prosecution has the burden of proof in this case. It has to prove the charge against the accused beyond any reasonable doubt. The prosecution has to prove that the accused, with malice aforethought and due to an unlawful act or omission, caused the death of the deceased.

Mr. Swaka in his submission contended that since no one witnessed the accused stab the deceased, the evidence against her was circumstantial. Counsel submitted that the circumstantial evidence adduced in the case did not meet the required standards. **Mr. Swaka** relied on the case of **SAWE –V- REP [2003] KLR 364**, where KWACH, LAKHA and O’KUBASU JJA held:

- 1. In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.***
- 2. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.***
- 3. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.***
- 4....***
- 5. ..***
- 6...***
- 7. Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”***

Mr. Swaka relied on submissions by **Mr. Meenye** for the Appellant in the case of **VENANZIO NZIVO –V- REP. CA NO. 81 OF 2003**, where **Mr. Meenye** suggested the test for circumstantial evidence in the following manner:

“The correct test for such evidence was whether it led to only one conclusion and was not explicable on any other reasonable hypothesis. He went through the evidence of each of the 10 prosecution witnesses and pointed out that there was singular omission by the learned Judge to consider and eliminate the issue of sickness or accidental injury to the deceased prior to the date of death. There was also no consideration of the conduct of the appellant betraying his culpability as a murderer either prior to or after the incident.

I have taken the liberty to quote from the same case, **VENANZIO NZIVO –V- REP**, a test laid by the court. TUNOI, O’KUBASU and WAKI JJA set out the correct test for circumstantial evidence as follows:

“For our part, we think the appellant is on firmer ground here. As the entire case is dependent on circumstantial evidence the tests laid by this Court on many occasions readily come to mind:

“In a case depended on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt (Sarkar on Evidence – 10th Edition P.31). It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference – Teper v. The Queen [1952] AC 480, at page 489.” – See James Mwangi v. R [1983] KLR 327 at pg.331.”

In addition to the above case, and in furtherance to the discussion on circumstantial evidence, **Mr. Swaka** relied on a Court of Appeal case of **CHARLES MATHENGE MWANGI & ANOTHER –V- REP CA NO. 72 OF 1997** (unreported), where OMOLO, TUNOI JJA and RINGERA Ag. JA held:

*“The answer must be that in a case depending on circumstantial evidence, each link in the chain must be closely and separately examined to determine its strength before the whole chain can be put together and a conclusion drawn that the chain of evidence as proved is incapable of explanation on any other reasonable hypothesis except the hypothesis that the accused is guilty of the charge – see for example **REX vs. KIPKERING ARAP KOSKE & ANOTHER** [1949] 16 EACA 135.*

With profound respect to the learned Judge, it was his duty to himself and to the assessors to specify which circumstances he was relying on and what inference(s) he was drawing from those circumstances. We have ourselves set out what we think were the circumstances the prosecution was relying on and we have come to the conclusion that those circumstances are not necessarily incompatible with the innocence of the appellant. We do not know if the Judge would have come to the same conclusions had he set out each individual circumstance, and analysed it as we have done. Nor was it fair to the assessors to be given directions on the general principles applicable to circumstantial evidence without explaining to them the individual circumstance and asking them what inference they thought could be drawn from the circumstance.

We have said enough, we think, to show that we are not satisfied the conviction recorded against the appellant was safe. We are more inclined to agree with the dissenting assessor than with the learned trial Judge and the majority of the assessors. We accordingly allow the appeal, quash each of the four convictions recorded against the appellant, set aside the sentences of death imposed on each count and order that the appellant be released from prison forthwith unless he is held for some other lawful cause.

Those shall be our orders in the appeal.”

Mr. Swaka urged the court that in view of evidence of P.W.1., **Rhoda**, the chain of events in the case as far as circumstantial evidence was concerned was weakened. The learned counsel did not explain in what way **Rhoda**’s evidence has weakened the circumstantial evidence adduced in the case.

With regard to the murder weapon, **Mr. Swaka** urged the Court to find the evidence of PW2, **Peter**, of no evidential value since the weapon was not subjected to chemical examination. **Mr. Swaka** submitted further that the weapon, which was a knife according to the evidence of **Peter**, was not produced in evidence and therefore there was no nexus between the accused person and the alleged weapon. **Mr. Swaka** also submitted that the scene of crime personnel was not involved in these investigations and therefore the investigations were shoddy. He contended that no photographs were taken of the scene, and that there was no dusting of the house where it is alleged there had been a scuffle during the incident. **Mr. Swaka** specified that the alleged broken thermos flask and television set ought to have been produced as exhibits.

Mr. Swaka relied on the case of **REP -V- WINGA Bungoma HCCRC No. 19 of 2004**. This was a ruling by **Hon. Seregoni J.** in which he acquitted the accused person on the grounds that none of the 11 witnesses who testified in that case mentioned having seen the

accused person stab the deceased. That case can easily be distinguished from this case in that there is other evidence in this case while in the cited case there was no evidence implicating the accused.

Mr. Swaka relied on the case of REP -v- KAUMBUTHU Machakos Criminal Case No. 31 of 2003 in which Hon. Wendoh J. acquitted the accused person for reason that the Court was left to guess whose blood was on a panga that was recovered and produced in Court as an exhibit and as a murder weapon. In addition the court found that the circumstantial evidence adduced in Court did not irresistibly point at the accused as the murderer. In the instant case the prosecution is not relying on the murder weapon or on blood in support of their case.

Mr. Swaka also relied on REP -V- WAFULA Bungoma HCCCRC No. 40 of 2008, where **Hon. Seregoni J.** acquitted the accused person on grounds that the blood stains found on the jacket and kitchen knife produced in Court as exhibits was found to be that of the accused and therefore there was no nexus between the blood group of the deceased and the one found on the two exhibits. This case does not apply to the circumstances of the instant case and does not therefore apply.

In conclusion **Mr. Swaka** urged the Court to find that the prosecution case has not hold together and therefore acquit the accused person for the offence charged.

Ms. Macharia was the counsel for the State who prosecuted this case. On the date set for submissions, counsel sent **Mr. Mbugua** to hold her brief after the close of the prosecution case and **Ms. Rutto** at the close of the defence case. At both times, counsels stated that his instructions from **Ms. Macharia** to inform the court that the state was relying on the evidence adduced in the in support of their case and urged the court to convict the accused for the offence charged.

I have carefully considered the evidence adduced by the prosecution and the defence in this case. I have also considered at length the submissions made by the defence counsel and all the cases he cited. There is no witness who said that they saw the accused stab the deceased. As **Mr. Swaka** rightly observed, the prosecution is therefore relying on circumstantial evidence in support of a conviction. I am well guided by the court of appeal cases cited by **Mr. Swaka** especially the case of VENANZIO NZIVO –V- REP, supra, where it was held and I quote again:

“In a case depended on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt... It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference...”

The prosecution has shown that the accused visited the deceased on the day in question. The accused contradicted that evidence by contending that she merely went home to her husband on the material night only to find him in bed with two girls. Issue is who was telling the truth? Was the deceased the husband of the accused? The evidence adduced by **Patrick** was that the deceased and the accused were living together in 2008 until February 2009, when they fell out and the deceased requested him to house him for a while. There was also the evidence of **Diborah** who said that she was sharing the house with the accused since March of that year and that on the material day the accused left in the morning and never returned. There was also the evidence of **Peter**, the caretaker of the plot where **Patrick** and the deceased lived who said that the deceased had been housed by **Patrick** for some time. The evidence adduced in this case is overwhelming that the accused never lived at the house in question and that she was a visitor on the night in question. The evidence is very clear that the accused was not married to the deceased on the day in question neither were they living together at the time. The only roommate the accused had at the time was **Diborah** and her evidence was that the accused never went home that night. I find that the accused was not a tenant at the house where the incident happened and that she did not go home that night.

The evidence before the court is that no one witnessed the deceased being stabbed. The issue is who did it and whether the circumstantial evidence relied upon by the prosecution meets the requisite test as set out in the **VENANZIO** case, supra.

There are several issues which are not in dispute. There is no dispute that the accused person visited House No.10 where the deceased was sleeping on the material night. There is no dispute that House No.10 was rented by **Patrick**. There is no dispute that **Patrick** had travelled to his upcountry at the material time. There is also no dispute that **Rhoda** and **Mwende** had visited the deceased on the material time.

The evidence of the accused was that she was left inside the house with the girl who had opened the house for her. From the evidence the girl who opened the house was **Rhoda**. The accused testified that the deceased had ran out of the house with **Mwende** in hot pursuit and that it was only afterwards that **Peter** the caretaker came and removed **Rhoda** and her from the house that it was discovered that the deceased had been stabbed.

Rhoda in her evidence testified that it was the accused that ran after the deceased leaving her and **Mwende** inside the house and that they did not open the door until the caretaker came to order them to open. **Peter** on the other hand testified that he was attracted by noises from the accused and that when he went out to check what was happening, he found the accused outside House No.10 and **Rhoda** and **Mwende** having locked themselves inside the house.

The issue is which of these three witnesses was telling the truth. **Peter** and **Rhoda** were saying the same thing that it was the accused that had gone outside the house with the deceased. At least it is clear from the evidence of **Peter** that he found the accused outside talking loudly as **Rhoda** and **Mwende** were holed up in the house.

I considered that it was **Peter** who had no interest in this matter not having been part of the dispute that was going on between the accused, the deceased, **Rhoda** and **Mwende**. He was therefore an independent witness in this matter. I find that **Peter** could be believed as one who was not biased for the simple reason he had no interest in the matter. At least there has been no allegation of bias against him or any suggestion that he had any interest in the matter. I therefore believe his evidence that he found the accused making noises outside House No.10 where **Rhoda** and **Mwende** had locked themselves in. **Peter's** evidence corroborated the evidence of **Rhoda** that she was left in the house with **Mwende** and that it was the accused and the deceased who were the first to leave the house that night, after the arrival of the accused.

That leads me to the next issue which is who stabbed the deceased? From the evidence of **Rhoda**, the accused was carrying a knife which she picked from the house before the deceased woke up from the bed. It is clear that the deceased was unaware that the accused was armed with a knife at the time the two of them left the house. This was before **Peter** came to the scene. From **Peter's** evidence, he found the accused making noises outside house no. 10 and the deceased was nowhere in sight. Further evidence was that **Peter** took the accused outside the gate and locked her out before going for **Rhoda** and **Mwende** from the house. It was when they, **Peter**, **Rhoda** and **Mwende** returned that they found Police and also saw the deceased lying 100 meters from the plot with a deep wound on his neck. Going by the evidence before court from **Peter** and **Rhoda**, the deceased must have been attacked after he left the house with the accused and before **Peter** took the accused outside the gate.

I find that the evidence adduced in this case clearly shows that the accused had formed an intention to attack the deceased on the material day and that for that purpose she armed herself with a knife. A knife is capable of being an offensive and or dangerous weapon. I find that the accused had formed the necessary malice aforethought to cause the deceased injury. If in the circumstances the court will be satisfied that it is the accused who injured the deceased, it can safely be inferred that she knew or ought to have known that stabbing the deceased on the neck as she did could result in grievous injury or even death. Section **206 (a) and (b)** of the Penal Code provides as follows:

“206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances –

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;**
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.”**

I find that the prosecution has established that the accused had formed the necessary malice aforethought to commit the offence charged within the meaning of section 206(a) and (b) of the Penal Code.

I have carefully considered the evidence adduced in this case and I find that the prosecution has shown that the accused went to **Patrick**'s house which he shared with **Isaiah**, the deceased, and armed herself with a knife. Rhoda witnessed the accused picking a knife from the container of utensils in the house. The accused then chased the deceased out of the house or at least procured his movement out of the house and outside the plot. The evidence is that the two were gone for some time before the accused returned to the same house where **Rhoda** and **Mwende** had locked themselves, demanding that they go out and face up with her. It is the noises that the accused made at this stage that attracted **Peter** to the scene. It is also clear from this evidence that the deceased had already been stabbed. That is the only inference one can reasonably make from this evidence as that is the only explanation for the accused return to the plot. The accused had dealt with the deceased and had gone back to deal with the girls.

Mr. Swaka has raised issue regarding the alleged murder weapon. It is correct to say that the knife recovered by **Peter** one day after the incident was not taken for any chemical or other examination as suggested by **Mr. Swaka**. It is also true that the knife was not produced as an exhibit. The question of a nexus between the knife and the accused never formed part of the prosecution case. The evidence adduced by the prosecution case is that the accused armed herself with a knife shortly before the deceased was found with a stab injury on his neck and that it was from that injury that he died. The prosecution was not diligent in the manner the investigations were carried out and in the collection of evidence. For instance the knife should have been adduced in evidence as it was recovered as a possible murder weapon. The doctor's findings confirmed that indeed the deceased had been stabbed which means the knife was confirmed to have been a probable murder weapon. The watchman who was on duty at **Peter**'s plot should have been called as a witness. This witness could at least have talked about how the deceased went through the gate he was guarding. That notwithstanding, I find that there was sufficient evidence adduced in this case to show that the deceased left the House No.10 in company of the accused; that the accused was armed with a knife at the time the two left; that the accused alone without the deceased after sometime; and that **Mwende** and **Rhoda** were all the time inside House No.10 and so had nothing to do with the injury inflicted on the deceased.

The accused was the last to be seen with the deceased alive and so should give some explanation of how they parted. That is a statutory burden placed under section 111(1) of the Evidence Act. That section provides as follows:

“111.(1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him.

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist:

Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”

The accused person had to explain what happened to the deceased or how they parted company. All the accused needed to do was to make a statement such as would create a doubt in the mind of the Court as to his guilt and which doubt would be resolved in his favour.

The accused explanation is a denial that in fact she did not leave House No.10 until **Peter** removed her from there. That has been shown not to be the case. The accused explanation is a mere denial. The evidence adduced against her is overwhelming that she left the house in hot pursuit of the deceased and that at the time she was armed with a knife. The fact the deceased was found stabbed shortly later is no coincidence. I find that the evidence adduced by the prosecution points irresistibly at the accused as the one who had the malice aforethought, the weapon and the opportunity to stab the deceased. I find that from the circumstantial evidence in this case an inference can safely be made that the accused is the one who fatally stabbed the deceased. I find that the accused act against the deceased was unlawful and was motivated by malice.

The accused did not plead provocation; however I wish to consider whether that defence is available to the accused. Provocation is defined under S.208 of the Penal Code.

“208. (1) The term “provocation” means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master or servant, or deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.”

The definition given above means therefore that if in the heat of the moment or passion a person strikes another person when insulted to a degree which would deprive an ordinary person the power of self control, an act of killing resulting from such striking would amount to manslaughter rather than murder.

The testimony of **Patrick** was that the accused and the deceased lived as man and wife in 2008 until they parted in February 2009. The incident in this case took place on the night of 31st May, 2009. That was over two months since the two broke up. Having carefully considered the circumstances of the case I find no evidence to suggest that the accused struck the deceased in the heat of the moment. The accused planned in her mind to kill the deceased when she entered his house and armed herself with a knife and then chased the deceased out of the house with it. The defence of provocation was not available to the accused in the circumstances.

Having carefully considered the evidence adduced in this case by both sides, I find that the circumstantial evidence adduced in this case points irresistibly at the guilt of the accused and that there are no other co-existing circumstances which weakens or destroys the inference of the accused guilt. I reject the accused defence in total and find the accused guilty of the offence of Murder contrary to S. 203 of the Penal Code and convict her accordingly.

Dated at Nairobi this 5th day of February, 2010.

LESIT, J.
JUDGE

Read signed and delivered in the presence of:

Elisha.....Court clerk

Accused..... present

Mrs. Tuta holding brief for Ms. Macharia for the State

Mr. Swaka for the accused

LESIT, J.

JUDGE