

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Criminal Case 68 of 2007

REPUBLICPROSECUTOR

VERSUS

TERESIA NCORORO MACHOKI ACCUSED

JUDGMENT

The accused was charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. The particulars of the offence are that the accused on 21st day of October 2007 at Athi Location in Igembe District within Eastern Province murdered Teresia Karia Machoki. The evidence presented before court by the prosecution was that the accused person murdered the deceased by poisoning. PW1 stated in evidence that he previously worked as a casual laborer for the accused. On 21st October 2007, which was a Sunday at 8pm he, together with others, was served by the accused alcohol brewed by the accused. He stated that the accused would serve the alcohol inside the house and bring it outside where he together with the accused husband and the deceased were taking the alcohol. He stated that the alcohol was brewed from sugar cane called *Kathoroko*. After he took less than a cup he became very drunk and unconscious. He found himself at Maua Methodist Hospital. He stated that he used to take alcohol before that date. He even used to drink alcohol brewed by the accused. Ordinarily, he would take more than one cup. He stated that the deceased died after drinking the brew. PW2 stated that she went to the accused compound and found the deceased PW1 and the accused husband lying on the ground each holding a cup. She did not check if the cups contained anything. When the three did not respond to her, she screamed. Other people responded to her screams. The accused who was also not there responded to the screams. When the people arrived, they arranged to take the three people lying on the ground to the hospital. PW2 said that he had seen the three earlier in the day. PW2 also said that the accused was a brewer of the local liquor and had been brewing for a long time. PW3 was the son of the deceased. On the material date, he was at his house when he heard screams. He could hear his name and his brother's names being called out. On going to the scene, he found PW1, accused husband and his mother, the deceased on the ground. They could not talk. He noted that there was white foam coming from their mouths. His mother died on the way to hospital. Later, the police went to the accused home and took away cups that had some content of alcohol and a drum. He too said that the accused was a brewer of alcohol. PW4 was the doctor who carried out the postmortem of the deceased. He found that there

was erosion in the stomach which in his opinion was caused by a chemical or a very strong spirit/alcohol. He therefore removed the deceased stomach and its contents, kidneys, urine, blood and a portion of the liver which were sent to the Government Chemist for analysis. At the time when he carried out the post mortem, the cause of death could not be determined. PW5 was the Government Analyst. She stated that she received samples as stated by PW4. After carrying out the tests of those samples, she made the following report:-

“Alcohol (ethanol) was detected in the blood and urine of the deceased at concentrations of 228 and 376 mg per 100 mls of the samples respectively. The blood alcohol level is equivalent to a minimum intake of 5 ½ half litre bottles of beer or 12 tots of whisky. No other chemically toxic substances were detected in the exhibits.”

The witness proceeded to state that what would be considered as poison would be that which would have adverse effect on tissue and on organs. In the case of ethanol, the minimum amount is between 350ml and 100ml. In this case, however, she found that the amount of Ethanol was 228ml. This is the amount she found in the deceased's stomach, urine, kidney, liver and lungs. She therefore was unable to tell what could have caused the death of the deceased. This witness gave an example of herself on being cross-examined and stated that she had never taken alcohol in her life. Being of that state, if she had taken the alcohol content found in the deceased organs, she would have died. She however would have died because her body was not accustomed to taking alcohol. In this case, prosecution witnesses said that the deceased used to taking alcohol. PW3, her son in particular, commented that at the time of her death the deceased had reduced her alcohol intake. Although the investigation officer said that the deceased died of what was suspected to be poisoning, his suspicion was not supported by the expert evidence of PW4 and 5. In her defence, the accused denied serving PW1 her husband and the deceased with alcohol. She denied that she had brewed the liquor. She said that on getting married 12 years prior, she had stopped brewing alcohol. When the prosecution prefers a charge as it has done here against the accused person, the burden of proving the guilt of the accused lies on the prosecution. Prosecution is obligated to provide sufficient evidence in support of the charge. In an adversarial system such as the one we have, the prosecution is required to prove its case beyond reasonable doubt. The prosecution charged the accused with the offence of murder, that is, that she poisoned the deceased. The doctor who carried out the postmortem was unable to state what caused the deceased death. The Government Analyst who received the deceased organs on examination did not find poisoning. To the contrary, it was that the ethanol content of the alcohol in the deceased body was below the fatal amount. The evidence adduced by prosecution witnesses failed to show nexus between the death of the deceased and alcohol served by the accused. There is reasonable doubt on what caused the death of the deceased and there is greater doubt that the accused was responsible for that death. I therefore find the accused not guilty of murder and I acquit

the accused of the charge of murder and order that the accused be set free unless otherwise lawfully held.

Dated and delivered at Meru this 26th day of July 2010.

MARY KASANGO

JUDGE