



**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE NO.8 OF 2007**

**REPUBLIC**

.....

**PROSECUTION**

~VRS~

**TIMOTHY BARASA MACHENGO**

.....

**ACCUSED**

**JUDGMENT**

The accused Timothy Barasa Machengo faces a charge murder contrary to section 203 as read with 204 of the Penal Code. It is alleged that on the 5<sup>th</sup> day of February 2007, at Wekelekha Village in Sirisia, Bungoma District, he murdered one Alex Simiyu. The accused pleaded not guilty to the offence.

On the material day, the accused visited his auntie PW1 around 8.00 a.m. He found PW1 with her children including the deceased Alex Simiyu taking tea. The accused was served with tea and given some maize for milling on his request. The deceased had a chronic skin allergy problem to which the accused brought him a liquid mixture for treatment. After taking the stuff, the deceased fell sick and after about three hours, he collapsed and died. The wife of the deceased who took a bit of the stuff was admitted in hospital the same morning in critical condition.

PW1 testified that she welcomed the accused in her house on the material morning. He had brought her son Alex some medicine to treat his skin allergy which stuff was wrapped in a black paper bag. The deceased requested his mother to give the accused some maize for milling. The accused was given the maize and left the home. PW1 walked together with the accused as she went to visit her sister. The two parted on the way and each went to their destination. On arrival at her sister's home, PW1 was informed of the death of her son. PW2 the daughter of PW1 was at home when the accused brought the liquid concoction to the deceased. The deceased drank some of the stuff from each of the two containers. The wife of the deceased did the same. Their mother PW1 had left the house after breakfast with the accused in her company. Around 11.00 a.m the deceased fell sick, bled from the mouth and collapsed. His wife was also rushed for treatment. Police came to the home and removed the body of the deceased to the mortuary.

PW3 did not witness the incident. She is PW1's sister and only rushed to the scene after being informed of the misfortune which befell her sister's son. PW4 the father of deceased was on duty in Kitale when the incident occurred. He went home the following day. On 7/2/2007 he identified the body to the sister who performed the post mortem. PW5 Dr. Alex Munyendo performed the postmortem on the body of the deceased. He formed the opinion that the cause of death was the liquid poisoning. He removed samples of the liquid from the stomach of the deceased, samples of the liver, kidney and blood. The samples were sent to Government Chemist for analysis.

The Government Analyst PW7 found nicotine which is, an alkaloid in the postmortem specimens. She also found vinblastine, also an alkaloid in the pale yellow liquid. PW6 is the investigating officer who visited the scene. He removed the body to the mortuary and took the herbal liquids in two containers as exhibits. He forwarded samples of the liquids to the Government chemist for analysis. He interviewed witnesses and recorded their statements before he charged the accused with the offence. PW7 Dr. Alwanga produced the mental assessment reports of the accused persons. He was of sound mind and mentally fit to plead.

In his defence the accused person said he visited his aunt, PW1 on the material day at around 8.00

a.m. He was served with tea which he consumed as he sat outside the house. PW1 also gave him two tins of dry maize. The accused said he did not see the deceased at their home that day. He denies taking to the deceased any poisonous liquid to drink for any ailment.

According to PW1, the accused who is her relative had come to her home to bring the liquid concoction to the deceased to treat his chronic skin allergy. The deceased's allergy problem had ailed him for about ten (10) years. To him therefore, any medicine or whatever stuff offered to heal the ailment was welcome. When the accused offered the medicine, the deceased welcomed the idea and consumed it in trust that it would do him some good. It was around 8.00 a.m. when the deceased used the liquid concoction and three hours later, he was dead. PW1 and PW2 saw the accused bring the deceased the herbal liquid in a black polythene bag. Inside the bag were two containers of two different liquids. PW2 saw her brother consume the stuff. PW1 was told by her son that the accused had brought him medicine to cure his long standing allergy. The accused requested the deceased to beg for him some maize from his mother. The deceased did so and PW1 gave half of the quantity the accused had asked for. Immediately, the accused got the maize, he left the home. The doctor who performed the post mortem found no food particles in the deceased stomach an indication that he had not eaten any meal after taking the liquid. It was only the dark tarn liquid found in his stomach. The doctor's opinion was that the cause of death was liquid poisoning. The Government Analyst PW7 confirmed that the liquid had nicotine and vinblastine both of which are toxic substances.

The accused admitted visiting PW1's family. However, he denied taking the poisonous herbal solution to the deceased or even seeing the deceased that morning. I did not believe this defence, It was a mere denial that he did not give and prescribe the liquid mixture to the deceased. PW1 and PW2 saw him bring the parcel. The deceased himself told the two witnesses that the parcel was herbal medicine brought to him by the accused. These two witnesses were credible and had no grudge against the accused. The accused in his defence made no mention of any existing grudge. The wife of the deceased was not called to testify. None of the witnesses talked about her fate after she was admitted in hospital. Even in the absence of her evidence I find that the evidence of PW1 and PW2 proves beyond any reasonable doubt that the accused brought and prescribed the herbal poison to the deceased. PW5 and PW7 found that the deceased died of the liquid mixture which contained toxic substances. I find that the prosecution have proved beyond any reasonable doubt that the accused poisoned the deceased which resulted to his death.

The accused did not explain where he obtained the poison or who concocted the mixture. It can be rightly concluded that he is therefore the author of the stuff and the executor of the poisoning. The accused's motive of killing the deceased did not come up in the evidence. Neither did the accused raise any defence on the lack of knowledge of the toxicity of the liquids. Each of the two liquids was parked in different containers and bore different colours being yellow and brownish. Both liquids had toxic substances namely nicotine and vinblastine. It could not have been a mistake or lack of knowledge of the contents and their effects in preparation of the solutions. The accused must have known that the solutions were so toxic that they would bring the life of the deceased to an end. The accused had walked from his home about four (4) kilometres away that early morning just to deliver the toxic liquids to the accused and prescribe them to cure the problem. The accused may be or may not be a dealer in herbal medicine. But the stuff he delivered to the deceased was surely not herbal medicine but poison which was specifically prepared and aimed at killing the deceased. The prosecution have proved that the accused had the intention to kill the deceased. It is my finding that the accused is guilty of murder as charged. I sentence him to death in the manner prescribed by the law.

**F. N. MUCHEMI  
JUDGE**

Judgment dated and delivered on the 25<sup>th</sup> day of November, 2010 in the presence of the accused, his counsel Mr. Murunga and the State Counsel Mrs. Leting.

**F. N. MUCHEMI  
JUDGE**