



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Appeal 56 of 2007**

**ALICE OWUOR .....APPELLANT**

**- AND -**

**REPUBLIC .....RESPONDENT**

**(An appeal from the judgment of Senior Resident Magistrate *Ms. Karani* dated 23<sup>rd</sup>**

**January, 2006 in Criminal Case No. 15189 of 2004 at Makadara Law Courts)**

**JUDGEMENT**

The appellant had been charged jointly with another (who, however, was acquitted) for maliciously administering poison with intent to harm, contrary to s. 236 of the Penal Code (Cap. 63, Laws of Kenya). The particulars were that the accused persons, on 21<sup>st</sup> July, 2004 at about 1.00 p.m., at Kariobangi Light Industries in Nairobi, wilfully, unlawfully and maliciously administered poison to **Rosemary Awuor** with intent to harm.

The complainant, **Rosemary Awuor** (PW1) testified that her house-girl brought her food on the material date and at the material time, at her place of work where she was selling second-hand clothes. The food consisted of potatoes and arrow-roots, and the house-girl asked PW1 to eat it. In spite of PW1's excuse that the food was hot, the house-girl was persistent; she asked: "Why don't you eat?" PW1 asked her to go, and return later to collect the utensils.

It was PW1's testimony that she later started eating the food: the first spoonful tasted strange; as she peered at the second scoop, it was changing in colour rapidly. PW1 started feeling weak; she went dizzy; her throat was burning. She rushed to her house for a gulp of water to cool off her throat; but she then found the house locked, with her child inside, crying. PW1 conducted a search, and found her house-girl, the appellant herein, in a neighbour's house. Even as she asked the appellant why the appellant had poisoned her, PW1 started vomiting; and **Moses** (PW3) brought milk for her to drink as a therapy; but she continued vomiting even the milk she drank, which bore a dark colour; and soon, PW1 began to have a running stomach, and then fell a sleep. PW1 was taken to a hospital in Kariobangi, where she was treated.

The appellant was later taken to the Police Station, where the incident was reported. The remains of the suspect-food were taken to the Police Station and held there.

On cross-examination, PW1 testified that the appellant, upon being questioned before she was taken to the Police Station, had admitted to having poisoned the food, and this had been a surprise to PW1.

PW3, **Moses Otieno Okatch**, had been called by PW1 when she was in pain and was vomiting. Although PW3 gave PW1 milk as an antidote, she continued vomiting. It is PW3 who, upon request, called PW1's husband who came and took PW1 to hospital.

**Police Constable Fredrick Munene** (PW4) conducted investigations into the allegations of deliberate poisoning of food. The witness delivered the food remains at the Government Chemist for analysis. The report from the Government Chemist indicated that the food was poisoned.

**Pauline Okello Ochola** (PW6), an enrolled community nurse at Rosadette Medical Clinic at Huruma in Nairobi, saw the

complainant on the material date at 6.30 p.m. when the complainant presented with stomach-ache and diarrhoea. PW6 dispensed magnesium for diarrhoea, and prescribed milk as drink.

**Habil Aketch Omondi** (PW7), a Government Analyst, received certain specimens for analysis from PW4, in particular a plastic jar containing foodstuff. PW7 conducted analysis, and in his report, he stated that the foodstuff contained zinc phosphate, a toxic chemical which causes harm if eaten. PW7 produced his report in Court.

The appellant made an unsworn defence, in which she referred not to the material date, but to *30<sup>th</sup> July, 2004*, as when she had cooked food and packed it ready to be taken to the complainant at her place of work. She said somebody else by the name *Ida* had opened the packaging of the meal without her permission; and all she did was to deliver that meal to her employer (the complainant).

In her analysis of the evidence, the learned Magistrate proceeded as follows:

**“I do appreciate there was no one who witnessed the 1<sup>st</sup> accused administer the poison. [But there was] ... overwhelming circumstantial evidence. Given [that] 1<sup>st</sup> accused was the cook and courier of the food ... she had ample opportunity to poison the complainant’s food. Having cautioned myself [in respect of] this circumstantial evidence, I find the 1<sup>st</sup> accused’s evidence ... not plausible; she did not appear to be a forthright person and her defence did not shake the prosecution case in any manner whatsoever.... [I] find the 1<sup>st</sup> accused guilty as charged, and I shall convict her accordingly.”**

After considering the appellant’s statement in mitigations, after treating her as a first offender; and after taking into account the time she had remained in custody, the learned Magistrate sentenced her to a six-year term of imprisonment.

The appellant’s grounds of appeal were: that the evidence had been wrongly appraised, leading to an improper conviction; that the sentence imposed was “too heavy”; that the appellant gives the promise to be law-abiding; that a non-custodial sentence is more appropriate if not outright acquittal.

At the hearing of the appeal, the appellant’s main concern was the length of the term of imprisonment. But learned State Counsel, **Mr. Mulati** urged that conviction and sentence had quite properly been arrived at, and should be upheld.

From the evidence, it is for certain that the *one person* who prepared, managed and conveyed the food which turned out to be poisoned, was the appellant herein. Her own statements to witnesses, regarding the incident, were contradictory, and this, taken together with her demeanour as assessed by the learned Magistrate, tended to corroborate the circumstantial evidence that she herself was the originator of the poisoned chalice that she fed to the complainant. Further corroboration is found in her persistent *urging of the complainant to consume* the said food even when it was still hot, and the complainant was yet to settle to take it. These *circumstances* show *intention*, on the part of the appellant, as the basis of the poisoning in the food. The appellant’s attempt, moreover, to implicate the 2<sup>nd</sup> accused in the criminal incident, would not stand up, as the trial Court quite properly acquitted 2<sup>nd</sup> accused. This leaves the appellant squarely on the spot, as author of the crime.

I dismiss the appellant’s appeal; uphold the conviction; affirm the sentence imposed by the trial Court.

**Orders accordingly.**

**DATED** and **DELIVERED** at Nairobi this 2<sup>nd</sup> day of February, 2009.

**J. B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court clerk: Huka**

**For the Respondent: Mr. Mulati**

**Appellant in person**