



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Case 42 of 2003

REPUBLIC ----- PROSECUTOR

V E R S U S

DIANA NASIMIYU AliasSERETA LUWINGO -----ACCUSED

R U L I N G

The accused, **DIANA NASIMIYU alias SERETA LUWIGO**, has been charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code.

It is the prosecution case that on the night of 28th December 2002, at Lwandeti village, Nande sub-location, Shivanga Location, in Kakamega District, she murdered her husband, **MESHACK TISA MUKAMBI**.

By the time the prosecution closed its case, it had already called ten witnesses.

PW10, **CLEOPHAS OKUBASU**, is the medical doctor who carried out the post mortem examination on the body of the deceased. He concluded that the cause of death was cardiac arrest due to the severity of the burns suffered by the death.

According to the doctor, the deceased had third-degree burns all over the body.

He also observed soot in the trachea and the lungs of the deceased.

The doctor explained to the court that the existence of soot in the respiratory system of the deceased implied that the person was still alive and breathing at the time when he was burning.

The evidence adduced by the prosecution shows that the accused person used to live together with the deceased, in the same house.

On the material night, when the deceased burnt to death, he was inside the house which he used to live in with the accused. At the time, the accused was outside the said house.

Meanwhile, the door to the house had been locked from outside, with a padlock.

According to some of the prosecution witnesses, the accused had a key to the padlock, but she did not take any action to try and open the said padlock.

It would also appear that the accused person did not participate in the efforts to put-off the fire that was consuming the house wherein the deceased was locked in.

After analyzing all the evidence so far tendered, I have no doubt whatsoever that the accused person has a case to answer. I therefore find and hold that she has a case to answer.

Dated, Signed and Delivered in Kakamega, this 28th day of April, 2009.

FRED A. OCHIENG

J U D G E