



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Criminal Case 85 of 2004

REPUBLIC PROSECUTOR

VERSUS

WILSON UHURU BAJE ACCUSED

JUDGMENT.

The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 16th August, 2004 at Osiri village, Kothidha sub location in Homa Bay District within Nyanza Province, the accused murdered Anjeline Auma Uhuru, hereinafter referred to as “the deceased”.

The prosecution evidence briefly stated was as follows:

Florence Aluoch Ochieng, PW1, is a sister in-law of the accused. The deceased was married to the accused. On 16th February 2004 at about 9.00 a.m., PW1 went to the deceased’s house. She knocked at the door and the accused opened and welcomed her in. He informed her that he had quarrelled with the deceased. PW1 saw the deceased seated on a mat leaning against a wall. PW1 called the deceased but she did not respond. PW1 also noticed that there was blood on the floor and on the curtains. She touched the deceased’s chest and realized that she was very cold. She asked the accused why he had killed the deceased. The accused appeared surprised and asked, “**is she dead?**”. PW1 rushed out of the house and notified other family members about the deceased’s death.

Dinah Akumu Baye, PW2, is the mother of the accused. On 16th August 2004 she was informed by PW1 about the death of the deceased. When she went outside the accused’s house, she saw blood on the floor of the house. She heard the accused talking inside his bedroom. Thereafter she reported the matter to the police and the accused was arrested. PW2 said that the deceased had a stab wound on the lower part of the neck near the collar bone.

PW2 added that on the previous night she had heard the accused quarrelling and screaming at the deceased.

Christopher Ochieng, PW3, is a brother of the accused. He was informed about the deceased’s death on the material day at about 10.00 a.m. He was the one who identified the deceased’s body to **Dr. Ojwang, PW4**, who conducted the post mortem at Homa Bay District Hospital mortuary. The doctor found that the deceased had multiple cuts all over her body. He formed the opinion that the cause of death was severe bleeding.

The accused gave unsworn defence. He stated that on 15th August 2004, he was fishing at lake Victoria with several other fishermen. They left the lake at about 3.00 a.m. As he approached his house he noticed that there was a lamp that was on. He heard some people talking inside. When he called his wife there was no response. He decided to kick the door open. He tried to talk to his wife but she did not respond. It appeared to him that his wife was with someone else in the house. Suddenly a stranger attempted to sneak out of the house and the accused decided to attack him with a stick that he had in his hands. Unfortunately he missed the stranger and hit his wife. In the morning when PW1 went to his house to call the deceased, he asked her to call his brother. That was after he realized that the deceased had died. Thereafter he was arrested and taken to Homa Bay police station.

There is no direct evidence as to how the deceased met her death. When PW1 went to the accused's house, she found the deceased leaning against a wall with a lot of blood on the floor and the house curtains. The accused was in the house, seated on a bed. He pretended that he was not aware that the deceased had died. The accused however told PW1 that he had quarrelled with the deceased. He did not explain the cause of the quarrel neither did he tell PW1 where the blood in the house came from.

PW2 had heard the accused quarrelling and screaming at the deceased on the previous night. The accused did not explain to his mother, PW2, what had happened to the deceased. But even in the absence of direct evidence as to the cause of the death, the circumstantial evidence that was adduced by PW1 and PW2 points to no other person except the accused as the one who caused the death of the deceased. He was the only one who was with the deceased before she was found dead by PW1 and PW2. He had not told anyone that the deceased had died. Even when he told PW1 that he had quarreled with his wife, he did not explain the cause of the quarrel and neither did he explain where the blood that was in the house came from.

PW4 testified that the deceased had multiple cut wounds all over her body. That evidence discredits the defence that was tendered by the accused that he accidentally hit her with a stick when he was aiming at a stranger whom he found in the house. I reject that defence.

I am convinced that it is the accused who inflicted those multiple cuts on the deceased and thereby caused her to bleed to death.

Consequently, I find the accused guilty of murder as charged and convict him accordingly.

DATED, SIGNED AND DELIVERED AT KISII THIS 18TH DAY OF MAY, 2009.

D. MUSINGA

JUDGE.

Mr. Kemo: The accused is a first offender.

D. MUSINGA

JUDGE.

Accused: I have nothing to say.

D. MUSINGA

JUDGE.

COURT: The accused is sentenced to death as by law prescribed. Right of appeal within 14 days from the date hereof.

D. MUSINGA

JUDGE.