

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Case 27 of 2006

REPUBLIC.....PROSECUTOR

VERSUS

ISAYA ONYANGO WERE.....ACCUSED

S E N T E N C E

The accused was charged with murder contrary to section 203 as read with Section 204 of the Penal Code. The accused pleaded not guilty to the charge. The prosecution reduced the charge to manslaughter contrary to Section 202 as read with section 205 of the Penal Code. The accused pleaded guilty to the lesser charge of manslaughter.

The particulars of the offence are that:

“on the 3rd day of February, 2006 at Lusheya village, Musanda Location, Butere/Mumias District of Western Province, the accused unlawfully killed PHILISTER ASIGO WERE.”

On the 3rd February, 2006 at about 8.00 p.m. the accused was in his bedroom with the deceased who was his wife. The accused asked his wife whether she had given their sick child medicine but the deceased responded very rudely and threw the child to the accused. The accused got annoyed and hit the deceased who fell and hit her head on a stool. The accused together with the deceased’s sister assisted the deceased and kept her on the bed and she slept. The accused slept on the floor. Unfortunately the deceased passed away at about 10.00 p.m. A Post Mortem report by Dr. Hellen Koech opined that the cause of death was due to internal bleeding secondary to ruptured spleen from blunt abdominal trauma.

The accused was arrested at his home the same night. Mrs. Muleshe, Counsel for the accused, in mitigation submitted that the accused has two young school going children who were left with good Samaritans. The accused is sickly and suffers from H.I.V. and needs proper diet. The accused was provoked and is the sole bread winner whose parents depend on him. The accused is remorseful and is a first offender. He has been in custody for three years.

I have considered the mitigation by counsel for the accused and I also note the circumstances under which the offence took place. The accused is a first offender and is sickly. He has two children to take care of. A custodial sentence will not serve any purpose noting that the accused has been in custody since February, 2006. The accused is hereby set free and shall be at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 24th day of September, 2009.

SAID J. CHITEMBWE

J U D G E