



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Case 8A of 2006

REPUBLIC.....PROSECUTOR

VERSUS

WINNY SIGEI.....ACCUSED

JUDGMENT

WINNY SIGEI, the Accused is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on 28th day of March, 2006, at Kinyelwet Village in Bomet District of Rift Valley Province, she murdered Enid Chebet.

The prosecution case is that on 28th March, 2006, at about 12.30 pm, as the deceased, Jesca Chelagat, PW1, and other pupils from Surugusei Primary School walked past Accused's home on the way to their homes for lunch, Accused who had a knife called the deceased and asked her to get some water for her. Her eyes had popped out and she was talking incoherently saying that she wanted the blood of Jesus. Judging from that strange behaviour, the deceased refused to go near her. That infuriated her and she chased the deceased down to a nearby stream into which the deceased fell in an attempt to cross it. Accused caught up with her and stabbed her on the back and the head. A neighbour, Edward Kipkorir Biwott PW1, who had heard the children's screams ran to her rescue and pulled her from the river. With other people, he rushed her to Tenwek Mission Hospital where she died after three days.

Meanwhile the accused was overpowered and as she appeared mentally sick, she was also taken to the same hospital where she was treated and discharged the following day.

In her sworn testimony, Accused raised the defence of insanity and said she did not know what she had done. She only learned from her mother while in custody that she had stabbed her neighbour's daughter to death and she was extremely distressed about it.

Accused's mother, DW2, testified that a day before the stabbing incident, that is on 27th March, 2006, when she went to visit the Accused, she was surprised by her strange behaviour. Although the witness was alone, Accused wondered why she had gone to her home with a group of people intent on attacking her. That night the Accused did not sleep at all. She was restless and held the witness tightly fearing that she was going to be attacked. The witness left the following morning after the Accused's husband had promised he was going to look for money to take her to hospital. Before she returned to assist take Accused to hospital, she heard that Accused had stabbed a neighbour child.

It is trite law that where an accused person raises the defence of insanity, the burden of proving it rests with him. This is because a man is presumed to be sane and accountable for his actions or omissions until the contrary is proved. The standard of proof, however, is not as high as the one on the prosecution in criminal cases of beyond reasonable doubt. The one on the accused in cases of insanity is on a balance of probabilities. He has to prove that due to the mental illness, he did not know what he was doing at the material time, or that what he was doing was wrong, and so could not have formed the intent to commit the offence he did commit—**Marii Vs Republic, Cr. Appeal No. 116 of 1985 (CA)**. In **Paul Irungu Mwangi Vs Republic, Cr. App. No. 91 of 1981 (CA Nairobi)** it was held, following the decision in the English case of **R Vs Smith, 8 Cr App. R 72**, that where evidence to establish insanity has been called by the defence, the prosecution may call rebutting evidence. And where it is clear from the cross examination of the prosecution witnesses that the defence of insanity will be raised and it is ascertained that no evidence will be called to establish this defence, the prosecution may, before closing its own case, call evidence to negative insanity.

In this case most of the prosecution witnesses including the deceased's own father said they found accused's behaviour quite strange. Deceased's father said there was no problem between his family and the Accused's and that Accused used to give the deceased food whenever she went to her home.

Dr. Njau the Provincial Psychiatrist, who the prosecution called as PW9, testified that he treated Accused at the Provincial General Hospital, Nakuru for acute psychosis with paranoia on a referral from Longisa District Hospital. He described acute psychosis as a mental disorder with bizarre behaviour which causes one to have hallucinations believing in things that do not exist. He said that when one is in that condition, one has paranoia and is not in control of oneself and can act in a violent way.

After a careful consideration of this and other evidence on record, I am satisfied, as the state counsel conceded, that the Accused has proved on a balance of probability that at the material time, she was mentally sick and did not know what she was doing. In the circumstances, and pursuant to **Section 166(1)** of the **Criminal Procedure Code (CPC)**, I make a special finding that while the Accused is "guilty" of the act charged she was insane when she committed it.

That Section states:-

"1. Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

2. When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct."

Consequently by virtue of **Section 166(2)** of the **CPC**, I hereby report the case for the orders of H. E. the President. Meanwhile I order that the Accused be detained in Nakuru Prison, at which such other and further specialized treatment as shall be necessary may be arranged while she is detained there.

DATED and delivered this 26th day of November, 2009.

D.K. MARAGA

JUDGE.