



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**

**Criminal Case 13 of 2006**

**REPUBLIC** ..... **PROSECUTOR**

~VRS~

**CONSEPTA NELIMA WEKESA** ..... **ACCUSED**

**JUDGMENT**

The accused Consepta Nelima Wekesa was charged with the offence of murder c/s 203 as read with s.204 of Penal Code. It was alleged in the particulars of the charge that on 13<sup>th</sup> December, 2005 at Nasianda Village, Kabuyefwe Sub-location in Bungoma District within Western Province she murdered Richard Nyongesa. She denied the charge.

This case was partly heard by Lady Justice Karanja who recorded the evidence of seven witnesses before her transfer. When I took over the case, I informed the accused person of her right to recall any witnesses as required under section 200 of the Criminal Procedure Code but she informed the court that she did not wish to recall any. I proceeded to record the evidence of two prosecution witnesses and the defence of the accused.

The facts of this case are simple and straight forward. The accused is the wife of the deceased. On the date of the alleged offence, the deceased came home drunk, he wanted to take some cereals to go and sell but the accused resisted the move saying that she needed the food for the family. A fight ensued as a result of which the accused ran to the house of the in-laws with the deceased in hot pursuit but she was locked in and the deceased could not reach her. At some point the deceased fell and this resulted in his death. The fight was witnessed by PW7, one Nancy Nangila Sunguti who is the daughter of the accused. As at the time of giving evidence, i.e. 26<sup>th</sup> November, 2007 she was eleven years old. She is the only eye witness who narrated the background to this incident. When the mother refused with the cereals, the father started beating her. She cried and hit back with her fists. She was not armed with anything.

At some stage the mother ran away with the father running after her. When the father reached the house of PW1, he fell down and she subsequently noticed that his face was swollen. No one else saw the fight except this particular witness. When the accused was informed of the death of her husband she personally reported to the police at Kiminini Police Station where a upon interrogation by PW9 she was locked into the cells and subsequently charged with this offence.

In her defence, the accused narrated in more less the same version as her daughter PW7, she did not touch her husband on that day and does not know how he died. She admitted that they used to quarrel when he came home drunk. They had been married for 14 years. When the body of the deceased was examined, the doctor formed the opinion that the cause of death was due to cardio pulmonary arrest due to head injury due to assault.

There is no evidence from any of the prosecution witnesses that the injury sustained by the deceased was caused by the accused. The accused had no weapon with her and none was recovered at the scene. It is true that she fought back the assault by the deceased using her fists but there is no evidence whatsoever that her fists caused the injuries sustained. In her defence given on oath, she denied causing the death of

her husband. She personally reported the death to the police and did not make any attempt to run away from the homestead. I saw her testify and watched her demeanor. Her evidence was consistent with that of her daughter PW7 and there is no evidence that the two colluded to the benefit of the accused. In my judgment, she appeared honest, firm and I believed what she told the court.

I find that the prosecution has failed to prove the case against the accused person and accordingly I acquit her of the offence charged. Unless otherwise lawfully held, she shall be set free forthwith.

Signed, dated and delivered this 16<sup>th</sup> day of December, 2008.

**A. MBOGHOLI MSAGHA**

**JUDGE**

Mr. Kraido for Mr. Makokha for the accused.

Mr. Onderi for the State.