



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

**Criminal Case 10 of 2006**

**REPUBLIC**

.....

**PROSECUTOR**

~VRS~

**FREDRICK OKARAU CHESEBE**

.....

**ACCUSED**

**JUDGMENT**

The accused Fredrick Okarau Chesebe is charged with the offence of murder c/s 203 as read with section 204 of the Penal Code. It is alleged in the particulars of the charge that, on 8<sup>th</sup> November, 2005 at Cheptais Market, Cheptais Location in Mt. Elgon District within Western Province he murdered Alice Chepkwemoi.

This case was partly heard by Lady Justice W. Karanja upto the close of the prosecution case. When I took over the proceedings I informed the accused of his right under section 200 (3) of the Criminal Procedure Code to recall any of the witnesses who had already testified. He however said he did not wish to recall any witnesses and the hearing continued from where my predecessor had stopped.

The learned counsel for the accused made submissions of no case and after the counsel for the Republic replied, I found that the accused had a case to answer and proceeded to call him to offer a defence whereupon he testified on oath and called one witness who happened to be his second wife.

The prosecution called 8 witnesses in support of the charge. The accused is the husband of the deceased and from the evidence on record they had been married for many years. On 8<sup>th</sup> November, 2005, the accused is said to have visited a bar at Cheptais Market where he sat with his wife having a drink. He was seen there by Evans Morara PW1 who testified that the accused bought him a drink when they met in the bar. After sometime PW1 left the bar to have a meal outside and on his return he found the accused arguing with his wife followed by a fight. The accused is said to have slapped his wife and a bar attendant alongside, PW1 intervened and the fight ended. Thereafter PW1 left. It is his evidence that he knew the accused well as they were related.

PW2, Isaac Chebosi Okarau is the son of the accused. On 8<sup>th</sup> November, 2005 he was at home when his father sent for his wife and the wife (his mother) went with a boda boda operator and his parents did not return until around midnight. On the following day, his mother did not leave her bedroom and that remained the case for 5 days.

When she eventually left her room he noticed that her face was swollen and when he asked her what happened, the mother said he should ask his father. However, the father told him to leave his wife alone.

The mother went to Cheptais Health Centre and thereafter to her mother's home. She returned home at the request of the accused who then took her to Bungoma for further treatment. On being discharged, there was no improvement and on 26<sup>th</sup> November, 2005 her condition worsened and on 27<sup>th</sup> December, 2005 she passed on. He concluded the two had quarreled. It is the evidence of this witness that he did not know the cause of his mother's death. He added that his mother used to have health problems as her body could swell for no reason.

The mother of the deceased one Esther Chemonga Kirui also gave evidence in this trial as PW5. It is her evidence that her daughter reported to her that her husband had beaten her. She noticed her head swollen and the deceased told her that the accused had knocked her head against the wall in a bar. PW5 asked the accused why he had beaten his wife and

the accused is said to have retorted that he had paid dowry for her adding that she was first pretending to be sick. She assisted in taking the deceased to the hospital.

David Chengek Kirui is the brother to the deceased. He visited the deceased at Elgon View Hospital on 15<sup>th</sup> November, 2005 whereupon the deceased could not talk and had no visible injuries. However, a daughter of the deceased told him that she had been beaten by her husband. He questioned the accused who said the deceased was sick. Despite that, he made a report to the police having suspected the deceased had been beaten by the accused. On 27<sup>th</sup> December, 2005 he was informed that his sister had died and he decided to come home. He reported the death at Cheptais Police Station and later asked the accused person to accompany him to the hospital for postmortem but he refused.

Doris Kapkerich Musa is a sister of the deceased who visited their home on 18/11/2005. She found her husband outside and when she went into the house her sister was lying in bed. When she called her to the sitting room she walked with unsteady feet and she could see her face was swollen and eyes blood shot. She asked the deceased what had happened and she said had been beaten by the accused. Just then the accused walked in and Doris could see that the deceased appeared afraid and threatened. She was later informed that her sister had died and she attended the postmortem examination.

Dr. Mulianga Ekesa gave evidence and produced the post mortem report on behalf of Dr. Alwanga who conducted the postmortem on the body of the deceased. Dr. Ekesa had worked with Dr. Alwanga for 4 years and identified his signature. He was called to testify because he is the one who examined the accused for purposes of the trial and also because Dr. Alwanga who performed the said postmortem, was not immediately available to give evidence. The record shows that, there was no objection on the part of the defence. According to the findings of the post mortem examination, the cause of death was cardio respiratory failure secondary to subdural haematoma which was secondary to 2% trauma(blunt).

In his defence given on oath, the accused told the court that he is a retired military officer and has been married to the deceased since 1977. He did not know what killed her. He was away in Gilgil and found her ailing while he was away. He had traveled to Gilgil on 8<sup>th</sup> October, 2005 and returned to Cheptais on 13<sup>th</sup> November, 2005. He produced bus tickets for those two days issued by the bus he had taken known as Eldoret Express. When he found his wife ailing he caused her to be admitted at Elgon View Hospital from 2<sup>nd</sup> December, 2005 to 16<sup>th</sup> December, 2005. She was diagnosed as suffering from Malaria. After Christmas she became sick again and was admitted to Cheptais Health Centre for two days and died on 27<sup>th</sup> December, 2005.

He denied beating her and said there were no differences between him and his wife and their relationship was good. He added that the evidence of his brother in law David and his sister in law Doris Omuse was false. It is also his defence that the body that was examined and postmortem report prepared was not that of his wife as his wife was 49 years old while the post mortem report was on a body of a female African in her mid twenties. He also said as the cause of death as found by the doctor was not true as the allegation that he fought his wife at Cheptais was hearsay. He was not in any bar at Cheptais on the alleged date and although he knew PW1, Evans Morara it is not true that they were related. He was away on the date of the alleged assault on the deceased.

The deceased called Marion Muthoni Okaruu who is the co-wife to the deceased who said that she knew the deceased had malaria as she told her so on 30<sup>th</sup> November, 2005 when she visited her at Cheptais. On 7<sup>th</sup> October, 2005 the accused went to Gilgil and returned to Cheptais on 13<sup>th</sup> November, 2005. She knew of no differences between the two.

The prosecution established beyond any reasonable doubt that Alice Chepkwemoi is dead. Her body was identified by her brother and sister at the hospital for purposes of a post mortem examination. I have noted the discrepancy of the age of the body examined in the post mortem report exh.1. But the discrepancy of age alone does not in any way show that the body examined was not that of the deceased. The purpose of post mortem examination is first to confirm the fact of death and secondly the cause thereof. This, the prosecution achieved. It is the case of the prosecution that it is the accused person who killed the deceased. PW1 Evans Morara only saw the accused slap the deceased. The accused has denied being in that bar on the alleged day. However, other than PW1 saying he saw the accused in that bar, PW2 Isaac who is a son of the accused said on that day the father who is the accused sent for the deceased who joined him and returned home late in the night. These two witnesses place the accused person at Cheptais market on that day. Their collective evidence has dislodged the evidence of alibi advanced by the accused and his witness called in defence. The deceased told her sister PW7 and her mother PW5 that she was assaulted by the accused. Her mother's evidence went beyond that in that, she said the deceased told her that the accused knocked her head against the wall in the bar. That evidence is consistent with the finding of the doctor as to the cause of death.

The only logical conclusion is that the deceased died as a result of injuries sustained as a result of the beating by her husband. The question that follows is whether or not the accused person had the intention to kill the deceased or if he knew that the injuries would have led to her death. In my judgment the knocking of the head of the deceased against the

wall was dangerous enough to have informed the accused that the consequences were likely to be fatal. *Mens rea* can therefore be imputed from the actions of the accused. In the end, I find that the prosecution have adduced sufficient evidence to prove the charge against the accused person whose defence cannot withstand the weight of the prosecution case. I therefore find him guilty of the offence of murder c/s 203 as read with s.204 of the Penal Code and convict him accordingly.

Signed, Dated and Delivered this 16<sup>th</sup> day of December, 2008

**A. MBOGHOLI MSAGHA**

**JUDGE**

Mr. Kraido for the accused.

Mr. Onderi for the State

Mr. Kraido: I have nothing to say.

COURT: The only sentence provided for in law is death. I therefore sentence the accused to death as provided by law.

**A. MBOGHOLI MSAGHA**

**JUDGE**

**16/12/2008**

Right of appeal within 14 days.

**A. MBOGHOLI MSAGHA**

**JUDGE**

**16/12/2008**