



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

**AT BUNGOMA**

**Criminal Case 34 of 2005**

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

**~VRS~**

**JIMMY WEKESA NAMASAKE** ..... **ACCUSED**

**JUDGMENT**

The accused Jimmy Wekesa Namasake was charged with the offence of murder c/s 203 as read with 204 of the Penal Code. It was alleged that on the 1<sup>st</sup> day of April, 2005, at Yabeko Village, North Kulusilu Sub-location, Sirisia Location in Bungoma District within Western Province he murdered Pharize Namasaka. He denied the offence.

The case was heard by Lady Justice Karanja up to the stage whereby the accused was placed on his defence to answer the charge. When I took over the proceedings, I informed the accused of his right to recall any witness but he preferred not to call any whereupon he proceeded to give his defence by way of unsworn statement.

Having taken the case at that late stage, I did not have the opportunity to observe any of the prosecution witnesses but the evidence as recorded is sufficient for me to make the correct findings in this case. The accused is the son of the deceased. On the night of the alleged offence the accused heard screams coming from his mother's house. His mother was being attacked. He armed himself with a stick and proceeded to his mother's house and on arrival, he found his mother under attack. Nobody witnessed him killing his father. But it is in the evidence of his mother that on the date of this incident, the deceased came back and started demanding money from his wife which had allegedly been given to her by her son. The deceased also demanded money which had been given by their daughter called Jane but the wife told him that she had used the money to buy sugar and salt and there was none left. The deceased was armed with an iron bar which he threw at his wife but she ducked and the iron bar hit the lamp, the chair and the table. The lamp went off and she decided to run away. However, he got hold of her and started struggling with one another. She was floored and pinned down whereupon the deceased held her neck and tried to strangle her. It is at that stage that the accused came and asked three times who was attacking his mother but there was no answer. At this stage the accused hit the deceased. The mother then got an opportunity to run away. On the following day, the accused came back trembling and shaken. He was just saying that he did not know it was his father.

The body of the deceased was found lying about 20 metres away from the house. With the assistance of some relative the accused was arrested. The post mortem report produced in evidence as exhibit 1 showed that the cause of death was cardio pulmonary arrest due to hypoxaemia secondary to flail chest due to blunt chest trauma. The accused was then arrested and charged with this offence.

The accused person in his defence said when he heard his mother scream he went to her rescue and in darkness asked who was attacking his mother but there was no answer. He hit the attacker who freed his mother and went back to sleep. He returned moments later to ask who the attacker was only to realize it was his own father. He apologized to the father who said he had forgiven him. On the following day he went to the market to sell some ropes that he had made and later met one of his uncles who took him to the police station.

His evidence agrees in all material particulars with that of his mother who was a prosecution witness. The accused person has admitted that it is him who hit the deceased. But there is no evidence that apart from going to save his mother, he had any intention to kill the deceased, I agree with the learned counsel for the accused that this is a clear case of manslaughter. Therefore the accused is acquitted of the charge of murder and in place thereof convicted of the offence of manslaughter c/s 202 as read with 205 of the Penal Code.

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

**A. MBOGHOLI MSAGHA**

**JUDGE**

**Mr. Ocharo for Mr. Kituyi for the accused.**

**Mr. Onderi for the State.**

**MR. ONDERI: He may be treated as a first offender.**

**MR. OCHARO: Accused is very remorseful. At the time of his arrest he was 15 years old. Now he is 18 years old. His education was messed up.**

**He has been in custody for now 3 years. We ask that the court considers that period.**

**A. MBOGHOLI MSAGHA**

**JUDGE**

**COURT: The accused has been treated as a first offender. He has been in remand for 3 years now. I have considered all that has been said on his behalf in mitigation. I also have considered the circumstances under which he committed the offence.**

**SENTENCE: Accused shall serve ONE (1) day imprisonment such that he shall be set free at the rise of the court today.**

**A. MBOGHOLI MSAGHA**

**JUDGE**

**16.12.2008**