



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

**AT NAKURU**

**Criminal Case 53 Of 2005**

**AGNES AMANA KOLOBE.....ACCUSED**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**JUDGMENT**

The subject, Agnes Amana Kolobe, was charged with murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence were that on the 5<sup>th</sup> day of June 2005 at Kampi ya Moto village Nakuru District, the subject murdered Grace Lorimo. The prosecution called a total of six witnesses to establish its case against the subject. The case was prosecuted by Mr Koech, Learned State Counsel and was defended by Mr Juma on behalf of the accused. At the close of the prosecution case this court found that the subject had a case to answer. The subject opted to give sworn evidence.

The facts of this case are not in dispute. PW3, Moses Kamau Njoroge had lived with the subject as husband and wife for about a month prior to the incident. Prior to meeting the subject, PW3 and the deceased were lovers. On the material day *i.e.* on the 5<sup>th</sup> of June 2005, the subject had sought permission from PW3 to go and visit her parents at Kampi ya Moto. PW3 granted her the permission sought. Later in the evening he went to Kampi ya Moto to buy domestic provisions for his house. He was accompanied by PW2 Patrick Kamau Lomuleny. While at the shopping centre he heard people quarrelling from a certain house near the shopping centre. He identified the voice of the subject as being one of those involved in the quarrel. He went to investigate. It was about 7.00 p.m. in the evening. He found the subject quarreling with the deceased. The subject was accusing the deceased of having taken away her husband (PW3). PW2 managed to separate the two while in the company of PW3.

PW2 testified that PW3 tried to reconcile the subject and the deceased. From what transpired immediately thereafter PW2 and PW3 were convinced that the deceased and the subject had been reconciled. PW1 then saw the subject enter into a nearby house and emerge while holding a leso in her hands. She came back to where PW2 and PW3 were standing with the deceased. PW2 saw the subject stab the deceased on the chest with a knife. The knife was concealed in the leso. The deceased then screamed that she had been stabbed in the chest. According to PW2 the deceased then took a few steps towards a place where there was light and managed to remove the knife from her chest. She then fell forward to the ground and died. Many people came to the scene. PW2 and PW3 fearing for their lives disappeared from the scene.

PW2 testified that prior to the subject attacking the deceased with a knife he had heard the subject say that she was going to kill the deceased for having taken away her husband. This evidence by PW2 and PW3 was essentially confirmed by the subject when she testified in her defence. She confirmed that she

confronted the deceased and asked her what she was doing with her husband. Instead of answering her back, the deceased held the subject by the collar and wanted to fight her. At the time PW3 was at the scene, the subject asked him who between herself and the deceased was his wife. At that point, according to the subject, PW3 slapped the subject. He then kicked her. The subject felt provoked because as she was being beaten by PW3. The deceased had also insulted her calling her a dog. Further she heard the deceased say that PW3 no longer loved her.

It is at that point that the subject went to the house of one Susan Akeno, picked a kitchen knife, came back and stabbed the deceased. According to the evidence of the subject she did not intend to kill the deceased. According to her, she had felt provoked because she had found the deceased and PW3 embracing each other. The summary of her evidence is that she intended to frighten off the deceased and not kill her. PW4 Joseph Lokonyoi a relative of the deceased identified the body of the deceased when the post-mortem was conducted. PW5 PC Charles Njiru and PW6 Cpl. Lawrence Njue attached to Menengai Police Station upon being informed of the death of the deceased visited the scene, managed to retrieve the knife that was used to kill the deceased. They also collected the body of the deceased and took it to the Nakuru Provincial General Hospital Mortuary for post-mortem. PW5 and PW6 also arrested the subject and after the investigations charged her with the offence of murder.

PW1 Dr Joseph Kang'ethe Karani produced the post-mortem report which had been prepared by Dr. Kahi, his colleague at the Nakuru Provincial General Hospital. The post-mortem report was produced as *prosecution exhibit No. 1*. According to Dr. Kahi, the deceased sustained a stab wound to her chest which caused the lung to be contused. There was a wound on the arch of the aorta. There was massive bleeding in the sac encasing the heart. Dr. Kahi formed the opinion that the deceased died due to massive cardiac arrest secondary to a stab wound associated with the right haemothorax. PW1 also produced the P3 form filled by Dr. Mark Lutumia, his other colleague at the Provincial General Hospital Nakuru. The P3 form was in respect of the mental examination that had been conducted on the subject. The said doctor found the subject to be mentally fit to stand trial.

The issue for determination by this court is whether the prosecution proved its case on the charge of murder against the subject. As stated earlier at the beginning of this judgment, the facts of this case are not in dispute. The subject stabbed the deceased as a result of jealousy. The subject believed that the deceased and PW3 (*her husband*) (*who were former lovers*) were still continuing with their relationship inspite of the fact that in the intervening period PW3 had married the subject. The subject appears to have been insecure. The subject in her testimony did not deny the fact that she stabbed the deceased. According to her she did not intend to kill the deceased. The sum total of her evidence is that she intended to frighten off the deceased from continuing with a relationship with her husband (PW3).

To prove the charge of murder the prosecution must establish that the subject killed the deceased with malice aforethought. In the present case the prosecution proved beyond any reasonable doubt that the subject had the requisite *mens rea* to kill the deceased. The subject stabbed the deceased with such a force that the deceased sustained fatal injuries. She died on the spot. Prior to stabbing the deceased, the subject had told PW2 that she was going to kill the deceased. The subject had the mental capacity to make a determination that she was going to harm the deceased. She did not give any consideration to the fact that her action would result in the death of the deceased. The subject was reckless and as a result of her action, she caused the death of the deceased. In evidence in her defence, she indeed confirms that she intended to harm the deceased so as to keep her off her husband.

The prosecution thus proved that the subject had the requisite *mens rea* and further that the subject intended to harm the deceased by either grievously causing harm to her or fatally injuring her. The choice of the weapon by the subject is also an indicator of her determination to inflict an injury on the deceased that in this case ultimately proved to be fatal. In the circumstances of this case, I enter a finding of guilt for the charge of murder against the subject. The three assessors who assisted this court during the hearing of this case also reached a similar verdict to that of the court. They found the subject guilty of murder. I accordingly enter a finding of guilt for the offence of murder as charged against the subject.

**DATED at NAKURU this 1<sup>st</sup> day of February 2006.**

L. KIMARU

JUDGE