



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Criminal Case 36 of 2004**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**REHEMA CHARO MWADENA ..... ACCUSED**

**J U D G E M E N T**

The accused stands charged with the offence of Murder Contrary to Section 203 read with 204 of Penal Code.

She is charged that on 14.6.04 at Pendeza Village in Kilifi District she murdered Charo Mwandewa Ndezi. The deceased was her father.

The evidence for prosecution is that the accused had been having health problems for some time before this incident. That on 14.6.04 her parents; father (deceased) and mother PW1 went to visit her at her matrimonial home to discuss with her husband what to do about her illness and they wanted to take her to hospital. The discussions were being held outside her house by the three persons. She was inside her house and she could hear what was being said by the three people.

In her unsworn statement she said she heard them say that she – accused would not recover and that her husband should pay up the dowry. On hearing all this she suddenly took a panga from her house and rushed out and started chasing her father outside on the compound and cut him with the panga until he died just there in the compound.

These facts are not disputed and she admits having a struggle with her father who was cut and he died immediately. The accused had a young child she was caring for. The evidence was given by her mother who was present.

Post mortem was carried out and report produced as exhibit 1 showing that death was due to hemorrhagic shock due to multiple cut wounds to the body.

Upon considering the evidence laid before the court and the circumstances surrounding the commission of the offence, it is my view that the accused acted suddenly out of fear of what was to happen to her, she had not planned to kill before. I therefore find that the prosecution has not proved beyond reasonable doubt that the accused acted with malice aforethought. However it is clear and it is admitted by her that she cut her father with a panga (which was exhibited in court) and as a result of the injuries inflicted, the father died.

It was unlawful for her to attack her father to cut him up as she did. I find that she did commit the offence of manslaughter under Section 202 as read with Section 205 of Penal Code.

I convict her accordingly.

J KHAMINWA – JUDGE

Mr Gunga in Mitigation:

Accused is remorseful. There is evidence she has a child she is caring for. She has been behind bar for three years. This arose as a family dispute. I ask for lenient sentence.

Mrs Mwangi:

The accused committed a serious offence of manslaughter to kill her father. We ask for custodial sentence. No previous record. She should be treated as first offender.

### **SENTENCE**

I have considered the mitigation and the statement of the prosecution. The accused is a first offender and she has been in custody for some time. She left at home a young child. The circumstances surrounding the commission of offence are tragic. All the same, the life of her father was terminated by her unlawful actions.

I sentence her to suffer imprisonment for a period of one and a half years from today's date.

Dated the 15<sup>th</sup> September 2006.

**J KHAMINWA**

**JUDGE**

**15<sup>TH</sup> SEPTEMBER 2006**