

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Case 13 of 2005

REPUBLICPROSECUTOR

VERSUS

MULWA MULEMBA.....ACCUSED

JUDGEMENT

The accused person Mulwa Mulemba, was charged with murder Contrary to Section 203 as read with Section 204, of the Penal Code - that he Mulwa Mulemba, on 7.12.2004 at Liani Village in Ngumo Location in Makueni District in Eastern province, murdered Sabina Mulemba.

Evidence recorded against him on this record show that the accused was the last child of the seven children of the deceased Sabina Mulemba. He was married with two children. He was not known to be mentally insane. The evidence however show that on 7.12.2004 at mid-day, he carried a sharp panga and proceed to the kitchen of his mother, the deceased, who was at the time cooking lunch. Using the panga he suddenly and violently cut the deceased on the right temporal and occipital regions, virtually spilling out the brain tissue. He also cut her on her cervical spine fracturing it. The serious injuries led to the deceased's instant death. Dr. Hezron Macharia who later performed a postmortem on the deceased, established that the cause of death was the severe head and spine injuries.

In a Psychiatric Report dated 21.4.05 drawn by Dr E.G.M. Wazome, the then Senior Specialist Psychiatrist Eastern Province, the latter, after observing and examining the accused, concluded that the accused Mulwa Mulemba, during the killing of the deceased, suffered from a severe form of paranoid schizophrenia. He stated further that from his examination and observations, the accused, immediately after killing his mother, claimed that he had done so after receiving a verbal command from God that he should kill his mother, in order to avoid eternal punishment. The voice also had told him that by killing his mother, he would be helping to destroy the devil in the world and that his mother was herself willing to die. Dr.Wazome had concluded that the accused committed the offence while suffering from the disease of the mind to the extent that he did not know whether what he was doing was wrong or whether he ought not to commit it.

Later the accused was sent to Mathari Mental Hospital for further observation and treatment under the supervision of Dr. Ngugi Gatere on 12.5.2005. Dr. Gatere confirmed that accused was suffering from schizophrenia, a chronic mental disease which causes hallucinations and delusions. He said that the accused believed he was Jesus Christ who arose from the grave as an African. The doctor concluded that accused acted under hallucinations and delusions and could not know a wrong from a right, as a result of which he cannot be held legally responsible for his actions during the time when he killed his mother.

Both doctors recommended that the accused must be constantly kept under medical drugs treatment to enable him to remain normal and well.

The main evidence as to what had happened when the deceased met her death at the hands of the accused, came from PW1 Musembi Lena, a 15 year old boy who is grandson of the deceased and nephew of the accused. He was present when accused attacked the deceased with a panga and caused her instant death.

I have carefully considered the evidence on the record. I am satisfied that the accused, Mulwa Mulemba, who was represented by a qualified advocate at the time when the trial commenced before me,

after receiving medical treatment, was of sound mind and capable of understanding the proceedings and that this situation persisted until the trial ended.

The evidence before me however, proves beyond a reasonable doubt, that the accused is guilty of murder but was insane at the time when he killed the deceased, Safina Mulemba. Under the said circumstances the court makes the following orders under the provisions of Section 166 of Criminal Procedure Code:-

ORDERS:

1. The accused, who now is a convicted prisoner, shall be kept in custody at Machakos G.K. Prison, at the pleasure of the President.
2. The Deputy Registrar shall meanwhile prepare a relevant report to be presented to the president for President's orders, noting to include in the report, the fact that the accused will constantly be accessed to the relevant medical treatment as recommended by Dr. Ngugi Gatere.

Dated and delivered at Machakos this **29th** day of **November 2006**

D.A. ONYANCHA

JUDGE