

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Case 39 of 2002

REPUBLIC.....APPLICANT

-VS-

LYDIA OMUKOBA.....RESPONDENT

JUDGMENT

The accused has been charged for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code, Cap.63, Law of Kenya.

The particulars of the offence as stated in the information are as follows:

“On the 2nd February, 2005 at Kambi Moto Slum, Huruma Estate within Nairobi area, murdered Samuel Mukoko.”

In her evidence, the PW1 Lucy Wanjiku Kinuthia testified that she had known the deceased and accused as husband and wife for four months since they are neighbours. The PW1 recalled that on 2nd February, 2005 at around 8.00 p.m. she went to the shop and found a group of people. On going there, she was informed that the accused (who was then present) had stabbed her husband with a knife. When the PW1 enquired the accused denied the above, and instead claimed that it was actually her, husband who had stabbed her. Seeing the above, the PW1 took the accused to the house of Lillian where she removed her clothes. However, the PW1 never saw any injuries on the body of the accused. While at the scene, the PW1 was given a knife by a member of the public who alleged that the accused had used the same to commit the offence. From the scene, the PW1 went to Huruma Nursing Home where she saw the deceased being put in a taxi to take him to Kenyatta National Hospital. Apart from handing over a young child to the accused, the PW1 also assisted in taking her to Huruma Police Post. Unfortunately the deceased died on the following day. On the other hand, the PW2 – PC Nelson Kirimi testified that on 2nd February, 2005 the accused was taken to the report office of Huruma Police Post on allegations that she had stabbed her husband with a knife. In addition to the above, the PW2 was also informed that the husband been taken to the hospital in a critical condition. Subsequently, the PW2 re-arrested the accused and booked her. Thereafter, the PW2 was informed that the injured husband had passed away. In addition to the above, the PW2 also testified that the members of the public had handed over to him a blood-stained knife – Ex.1. In his evidence the PW3 – Inspector Henry Mbogo recalled that on 2nd February, 2005 at around 9.00 p.m. he was informed that the accused had been taken to Huruma Police Post on allegations that she had stabbed her husband following a domestic disagreement. On the following day, the PW3 went to Kenyatta National Hospital where he was informed that the victim had been pronounced dead on arrival. Eventually, with the permission of the court, the PW3 produced the post-mortem report – Exhibit 2 that was filled and compiled by Dr. Moses Njue. The Exhibit 2 stated that the cause of death was due to penetrative chest injuries.

In her defence, Lydia Omukoba (hereinafter referred to as the accused) introduced herself as a housewife and denied committing the charges that have been levelled against her. According to the accused, while she was performing her household chores on 2nd February, 2005 many people went to her house and demanded that she should come out since somebody had been stabbed. That group also explained that the victim resembled her husband. When the accused came out of her house, she was

identified as the wife of the victim before she was arrested and taken to Huruma Police Post where she denied committing the offence of murder. The accused was categorical that she did not know where her husband had been stabbed. She also denied quarrelling with the husband and owning the murder weapon – Exhibit 1.

After the summing-up, all the three assessors returned a verdict of “Not Guilty” against the accused. This court has carefully perused the entire evidence on record. In this case the prosecution only availed three witnesses. One was a civilian and two police officers. From the above, it is apparent that the prosecution never availed to the court even a single eye-witness. Though the PW1 was informed by a group of people that the accused had stabbed her husband, none of those people were bonded to come to court and explain explicitly what they saw. At best, the evidence of the PW1, PW2 and PW3 was mere hearsay with little evidentiary value. It is amazing that though the group of people are neighbours, the investigating officer never made sufficient efforts to bond them to give evidence. It is obvious that the evidence on record is sketchy, insufficient and without any coherence. The accused person has given her version of what may have transpired. Under the circumstances, her evidence looks reasonable and plausible. I hereby find that the prosecution has failed to prove their case beyond any reasonable doubt. In view of the above, I hereby concur with the unanimous verdict of the assessors that the accused is “not guilty” of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The accused is hereby “acquitted” and should be released forthwith unless held lawfully. Those are the orders of the Court.

MUGA APONDI,

JUDGE.

Judgment read, signed and delivered in open Court in the presence of the accused, M/s Nanjala for Mr. Mutua for Accused, Mr. Ndemmo for Ms Mwanza for State.

MUGA APONDI,

JUDGE.

7th November, 2006.