



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO.25 OF 2003**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**ESTHER NDOTO MWENDIA.....ACCUSED**

**JUDGMENT**

The accused was charged with murder Contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on the 27th November, 2001 at Ongata Rongai Township in Kajiado District within the Rift Valley Province she murdered MASTER TIMOTHY THANGWA.

The prosecution case is that the accused was employed by PW1 MARY THANGWA as a maid to look after the deceased. PW1 lived with PW4 IRENE and PW5 AGNES who are her sisters in the same house. On the material date they all left for work between 7.30 a.m. and 9.30 am leaving the deceased with the accused. PW1 had given the deceased some medication before she left for work and instructed the accused to give him some porridge later. The accused as instructed gave the deceased the porridge and placed him in bed to sleep. She went outside to chat with the neighbours' maids. At about 11 a.m. PW4 IRENE came back from work and found the accused seated outside chatting with the neighbours maids. PW4 inquired of where the child was and the accused told her that the child was asleep. PW4 entered the house and stayed for about 30 minutes before she started screaming saying that the child was dead. The matter was reported to the police.

The accused was later arrested and charged with this offence. To prove its case the prosecution called 6 witnesses. PW1 MARY WARUNGA THANGWA the mother of the deceased in her evidence told the court that the deceased was aged about 2 years. On the material date she gave the deceased some medication and went to her work place. At about 11.30 a.m. she received a telephone call from PW2 Benedette who informed her that her son MASTER TIMOTHY THANGWA was dead. She rushed home and on arrival she confirmed the death. The matter was reported to the police who visited the scene and collected the body. PW2 BENEDETTE in her evidence told the court that on the material date the 27th September, 2001 at about 11.30 a.m. she received a telephone call from IRENE PW4 who informed her that MASTER TIMOTHY THANGWA had died. She decided to ring PW1 the mother of the child and broke the news. She then rushed to the home of PW1 and on arrival she confirmed that the child had been killed. PW4 IRENE THANGWA in her evidence told the court that on the material date she left for work

at about 9 a.m. leaving the accused with the deceased. The mother of the deceased had left earlier at about 7.30 a.m. She came back to the house to collect her ID Card as she wanted to withdraw money from the bank. This was at about 11 am. On arrival she inquired from the accused where the child was and the accused told her that the child was asleep. She found the accused chatting with the maids of the neighbours. She went and collected her ID Card. On her way out she decided to check on the child. She tried to wake him up only to find that the child was dead. She then rushed out screaming shouting that the child was dead. The accused also rushed to the room but when she asked the accused what had happened to the child the accused did not answer. She then decided to ring her aunt Benedette (PW2) and broke the news. Benedette advised her not to break the news to the mother of the deceased. Benedette then broke the news to PW1. The matter was reported to Ongata Rongai Police Station. The police visited the scene and collected the body.

On cross examination she admitted that she had been arrested by the police as a suspect but was later released after she had been in remand for about a month.

PW5 AGNES NJERI in her evidence told the court that she had left the house at about 8.30 a.m. At about 11.30 a.m. she was telephoned by Irene PW4 who informed her that Timothy had been killed. On cross examination she stated that despite the fact that she was the first members of the family to receive news about the death of the child, she never recorded her statement to the police until 8th October, 2003 about 2 years later.

PW6 DR. PAUL MAUNDU who performed the post mortem on the body of the deceased formed opinion that the cause of death was due to strangulation.

The accused ESTHER NDOTO MWENDIA denied the charge and in her evidence told the court that on the material date the 27th September, 2001 at about 7.30 a.m. PW4 IRENE gave the deceased some medication and she left for work. But before she left for work she instructed her to give the deceased some porridge. As instructed she later gave the deceased some porridge and placed him in bed to sleep. She went outside and started chatting with the other maids of the neighbours.

At about 10.30 a.m. PW4 came back from work and found her outside chatting with the other maids of the neighbours. PW4 inquired from her where the child was and she replied that the child was asleep. PW4 entered the house and after about 30 minutes, she rushed out screaming and shouting that the child was dead. She rushed inside and confirmed that the child was indeed dead. PW4 went to Ongata Rongai Police Station where she reported the matter to the police. She came back with the police who arrested her and took her to the police station where she was locked in cells. She further told the court that the relationship between PW4 and PW1 the mother of the deceased was not cordial because they shared a man. PW4 was also arrested as a suspect but she was released after one month in custody through the intervention of influential relatives.

It is the prosecutions case that the accused strangled the deceased, placed him in bed, covered him with a sheet and got out, sat chatting with the neighbours maids. This is not the conduct of a person who had committed a serious offence of murder. Although the doctor confirmed that the cause of death of the deceased was due to strangulation, the fact that the accused was left with the deceased and the deceased was found dead in bed is not sufficient to found a conviction. There is no evidence that it was the accused who strangled the deceased. The burden on the prosecution, to prove the accused guilty beyond reasonable doubt has not been discharged.

The evidence adduced is insufficient to secure a conviction in a criminal charge.

All the 3 assessors returned a unanimous verdict of not guilty. I concur with them and I so find.

The case against the accused is dismissed and she is acquitted.

Dated this 15th day of June, 2004.

**J.L.A. OSIEMO**

**JUDGE**