

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
HIGH COURT CRIMINAL CASE NO. 45 OF 2004

REPUBLIC ::: PROSECUTOR

VERSUS

CHRISTINE KAKUTHU MUNYAO ::: ACCUSED

R U L I N G

The accused person Christine Kakuthu Munyao is charged with offence of Murder Contrary to Section 203 and 204 of the Penal Code. The particulars of the charge are that on 9/9/03 at Miyaa village, Malatani sub- location, Nzombe location in Kitui district jointly with another not before the court murdered one Raphael Munyao Mbula.

The prosecution called a total of four witnesses in support of that case. PW 1 Mutambuki Kalwenzi recalled that on 8/9/03 at about 8.00 p.m, he was walking home from Kabati when he met one Kitonga. He asked Kitonga what was happening where screams were coming from. Kitonga ran back where he had come from and PW 1 followed up to Munyao's home. He found Munyao lying down. The accused who was Munyao's wife claimed that the deceased, Munyao was drunk. Kitonga beat Munyao as he lay there and when PW 1 asked why he did that he pushed him and PW 1 fell. On getting up, he left for his home and learnt the next day that Munyao was dead. PW 2 James Munyao arrived home from school at about 10.00 p.m. On 9/9/03 only to find people gathered in his home and his father was lying in the house. He tried to talk to him but he could not respond. The accused told him to go and inform her co-wife about the death of the father. PW 3 the deceased's first wife who lived away said she received the report of death on 12/9/03. PW 4 accompanied the deceased's relatives to Kitui District Hospital where they identified the body for post mortem.

There is so far no evidence on record linking the accused with the murder of her husband.

When PW 1 arrived at the scene, he found the deceased already lying on the ground. He did not tell court much about the condition of the deceased. He did not talk to the deceased. He talked of Kitonga hitting the deceased while he lay on the ground but it seems the deceased was already injured seriously by the time PW 1 arrived. There is no evidence that accused took part in beating the deceased. PW 2 found the deceased already injured. He talks of the incident having taken place on 9/9/03 where as PW 1 talks of what he saw on 8/9/03. PW 2 did not see the mother injure the deceased. There is totally no evidence to link the accused with deceased's death save for suspicion. A conviction cannot be based on suspicion. The offence is a serious one and it was upon the prosecution to establish a prima facie case against the accused which they have not done. There is no evidence to warrant the accused to be called upon to defend herself.

She is, therefore, acquitted under Section 306 (1) of the Criminal Procedure Code.

Dated at Machakos this 7th day of December 2004

R.V. WENDOH

JUDGE