



REPUBLIC OF KENYA



**Republic v Nyamweya (Criminal Case E010 of 2022)
[2023] KEHC 845 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E010 OF 2022
JR KARANJA, J
FEBRUARY 2, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

AMOS JUMA NYAMWEYA ACCUSED

JUDGMENT

- [1] The information filed herein on the August 30, 2022 by the Director of Public prosecution charges the accused, Amos Juma Nyamweya, with the offence of murder, contrary to s 203 as read with s 204 of the *Penal Code*. It is thus alleged that on the night of 5th/August 6, 2022 at Musokoto Nambale within Busia County, the accused murdered Margaret Adhiambo Oduor.
- [2] The facts forming the prosecution case are that the deceased was the accused's wife and on the August 5, 2022 at about 6.00p.m she was spotted by Elizabeth Amoo Barasa (PW 1) lying on the ground within her home compound with her minor son called Lawrence asking her to return to their house. Elizabeth (PW 1) continued with her chores within her home which neighboured that of the deceased. But at about 9.00p.m she heard the accused conversing and shortly thereafter heard noises, indicating that a person was being whacked up with a stick.
- [3] Upon enquiring, Elizabeth (PW 1) saw the accused assaulting the deceased using a plastic whip. At the time the deceased was half naked. She (PW 1) pleaded with the accused to refrain from assaulting his wife but he told her to leave them alone.

On the following day at about 7.00a.m, she (PW 1) was called by the accused to his home where she found the deceased lying down fully naked and requested the accused to cover her with a cloth before she returned to her home and then proceeded to the market. She returned to the accused's home at 2.00p.m and found the deceased lying on the ground unresponsive.



- [4] She (PW 1) developed anxiety and sought help from a nearby relative with whom they confirmed that the deceased was actually dead. Mary Shikuku (PW 2), a village elder, learnt from the accused's father that the deceased was at her home lying down without "waking up". She proceeded to the scene and confirmed that the deceased was dead before reporting the matter to the area chief.
- [5] The area chief, Abel Imaipato (PW 3), upon being duly notified proceeded to the scene and also confirmed that the deceased was dead. He subsequently reported the matter to the police and PC Geoffrey Tanui (PW 5) of the Directorate of Criminal Investigations (DCI) Busia, was assigned the role of investigating the matter. Together with his colleagues they visited the scene and found a crowd of villagers and the bruised body of the deceased lying on a bed which had blood stained sheets. Next to the bed, two plastic rods and one stick containing blood stains (PEx 3) were recovered. The shirt and inner wear (PEx 4) worn by the deceased were also retrieved from the scene.
- [6] Cpl Douglas Wamalwa (PW 6), of the DCI scenes of crime Busia took several photographs of the deceased's body while lying on the bed (PEx 5). In the course of investigations, the investigating officer (PW 5) gathered that the deceased was a victim of domestic violence occasioned by her husband, the accused. He therefore preferred the present charge against the accused after it was confirmed by Dr Mike Odhiambo (PW 4), that the cause of death was asphyxiation secondary to strangulation.
- [7] In his testimony, the doctor indicated that the body of deceased in external appearance had numerous bruises all over suggestive of a struggle or physical altercation with the usage of an object such as a rope. The accused denied the charge preferred against him but elected to remain silent when he was placed on his defence. There was nothing wrong with the position taken by the accused as it was a confirmation of the legal truism that an accused person does not bear the burden of proving his innocence rather, the burden to prove his guilt lies with the prosecution.
- [8] Thus, the prosecution was herein required to prove beyond any reasonable doubt that the death of the deceased was caused by the accused's unlawful act against her.
- In that regard, the evidence adduced by Elizabeth (PW 1) remained undisputed inasmuch as it indicated that the deceased was assaulted by the accused within their homestead and in particular on the August 5, 2022 at about 9.00p.m.
- [9] Although the doctor (PW 4) disproved the fact that the deceased died from the assault injuries suffered by her (i.e. the bruises all over the body) he strongly suggested that the deceased may have been strangled with an object when she put up resistance and struggled with her assailant while being assaulted. The said assailant according to Elizabeth (PW 1) was her husband, the accused, who boasted of having "disciplined" her (the deceased)
- The doctor (PW 4) indicated that the strangulation mark around the deceased's neck implied that she was strangled with a rope or some other object.
- [10] Coupled with the evidence of the doctor, the evidence of Elizabeth (PW 1) who apparently was the key prosecution witness clearly and credibly established that more likely than not the death of the deceased was as a result of a criminal act committed against her. Such act involved being assaulted and strangled to the point that she was deprived of oxygen and perished as a result.
- Indeed, the cause of death was not disputed. The main dispute was the alleged involvement of the accused in the criminal transaction which led to the death of the deceased. There was no direct evidence against him in that regard. Nobody saw him in the act of strangling the deceased. The blood stains found at the scene were not subjected to forensic analysis to determine the presence of the accused at the scene. This reflected lack of diligence on the part of the investigating officer (PW 5).



[11] However, the evidence by the key prosecution witness (PW 1) offered strong and credible circumstantial evidence indicating that the deceased was a victim of her husband's violent nature and that he was the one possessed of the exclusive opportunity to assault and strangle her. They were the only adults together alone at the material time. There was evidence that their minor child may have been at the scene but his involvement in assaulting and strangling his mother was farfetched and impossible. The doctor's evidence did not indicate in any way whatsoever that the deceased may have committed suicide by strangling herself or was strangled accidentally.

[12] For all the foregoing reasons, this court must find and hold that the accused was responsible for the death of the deceased to the exclusion of any other person. The evidence against him, hitherto circumstantial, was sufficient and credible enough to establish that he was the person who strangled the deceased in the course of violently assaulting her on the material date.

The prosecution case was thus proved beyond reasonable doubt against the accused who is now found guilty as charged and convicted accordingly.

J.R. KARANJAH J.

J U D G E

DATED & DELIVERED THIS 2ND DAY OF FEBRUARY 2023

