



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**CRIMINAL CASE NO. 18 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID WAFULA JUMA.....ACCUSED**

**JUDGMENT**

The accused **DAVID WAFULA JUMA** is charged with offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that **DAVID WAFULA JUMA** on the night of the 12<sup>th</sup> and 13<sup>th</sup> day of May 2018 in Baharini village, Marinda sub location of Bungoma East Su-county within Bungoma County murdered **HILDAH NAFUNA WAMBOKO**.

The case for the prosecution is that on 13.5.2018, **PW1 Angela Juma** the mother of accused was at her home when accused went to her house at 5 a.m. and informed her that his wife one Hilda Nafuna Wamboko had committed suicide. She went to the house of accused and found deceased lying on the sofa set. She saw a Kikoy cloth on a timber on the roof hanging. She advised the accused to report to police which he did. She confirmed that it was only accused and deceased who were staying in the house.

**PW2 Isaac Simiyu** an employee of the accused and deceased testified that on the material day after closing the hotel the accused and deceased went into their house. At 5 a.m. accused went to him and knocked. He went to the accused's house and found the deceased lying on the sofa. Accused told him deceased had hanged herself.

**PW3 No. 67232 CPL Andrew Kipngeno** was at Malakisi police station when accused reported that he had quarreled with his wife over Shs 1500 and that she had committed suicide. He visited the scene with accused and found deceased lying on the sofa set. She had no injuries. They removed the body. He saw a kikoy cloth tied on a timber in the house.

**PW6 Dr. Edward Bulembwa** produced a post mortem report prepared by Dr. Patrick Muturi who performed the post moterm. Upon examination he saw bruises on the abdomen and on opening the body found that the liver was ruptured. He formed opinion that cause of death was due to ruptured liver as a result of blunt force trauma.

The accused upon being put on his defence gave sworn evidence in his defence. He testified that deceased was his wife. On 13.5.2018 he and the deceased went to their hotel and worked upto 9 p.m. when they went home. While at home they started discussing about the business low returns. They quarreled and he went to sleep leaving deceased watching T.V. He woke up at 5.30 a.m. and on going to the sitting room he found she had hanged herself using a maasai shuka (kikoy). He removed her and made her sit on the sofa. He went to look for assistance. He was alone in the house with the deceased as the children were away. The accused's mother came and confirmed deceased had died. He reported the matter to police who came and took the body to the mortuary. On cross examination by M/s Nyakibia, the accused confirmed that he was the only one with the deceased. He confirmed that the doctor saw no injuries on the neck but he denied that they fought. He testified that the ruptured liver may have been caused by a fall when he was removing the body.

Mr. Wamalwa Simiyu for the accused filed written submissions. He submitted that none of the prosecution witnesses testified as to who inflicted injury on the deceased and unlawfully caused her death. Counsel submitted that there was no proof that the death of the deceased was as a result of the unlawful act or omission, that it was caused by accused and that the accused had the requisite malice aforethought. He therefore urged the court to find accused not guilty and acquit him under Section 215 C.P.C

The accused is charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code which provides.

**203. Murder Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.**

**204. Punishment of murder Any person convicted of murder shall be sentenced to death.**

The ingredients of the offence which the prosecution must prove beyond reasonable doubt are:

- a. Proof of the fact and the cause of death of the deceased.**
- b. Proof that the death of the deceased was the direct consequence of unlawful act or omission on part of the accused which constitutes the actus reus of the offence.**
- c. Proof that the said unlawful act or omission was committed with malice aforethought which constitutes the mens rea of the offence.**

PW6 Dr. Edward Bulembwa produced a post mortem report prepared by Dr. Patrick Muturi who conducted the post mortem. He found that the body had bruises on the abdomen and on opening the body he found the liver was ruptured. He formed opinion that cause of death was rupture of the liver due to blunt trauma. The fact and cause of death was established by the witness. This witness also established that the act that caused the death was one that caused blunt trauma on the abdomen leading to rupture of the liver. Blunt trauma is the physical injury caused by forceful impact on the body.

The accused in his defence testified that they were only two people in the house. The deceased and himself. He further confirmed that the deceased was healthy and well when they entered the house. His explanation as to the cause of death is that she committed suicide by hanging. The doctor who performed the post mortem only observed bruises on the right fore hand measuring 3 inches. There were no marks on the neck or damage on the respiratory system which will confirm suffocation by hanging. Indeed, the only injury noted and which caused the death was ruptured liver in the abdomen which was caused by blunt force trauma.

The deceased did not die of suicide by hanging as the accused would want this court to believe but by forceful trauma on the abdomen which was never caused by the deceased.

The prosecution did not tender evidence of any eye witness. They however relied on the circumstance's which when considered cumulatively point to the accused as the person who committed the offence and no other. The circumstances established are:

- 1. That the accused and deceased entered their house while deceased was alive and well.**
- 2. That the accused and the deceased were the only people in the house.**
- 3. That the deceased was found dead in the house.**
- 4. That the deceased died from injuries from forceful blunt trauma causing rupture of liver.**
- 5. That the deceased did not die as a result of suicide.**
- 6. That no other person entered the house during that night.**

When the prosecution is relying on circumstantial evidence to prove guilt; the inculpatory facts must be incompatible with the innocence of the accused and incapable of any other reasonable hypothesis than that of guilt of accused. The court of appeal in expounding circumstantial evidence in **Sawe –vs- Republic (203) eKLR** stated:

**“In order to justify on circumstantial evidence the inference of guilty, the inculpatory facts must be incompatible with the innocence of the accused and incapable of any other reasonable hypothesis than that of his guilt. There must be no co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of the inference from the facts to the exclusion of any other reasonable hypothesis of innocence remains with the prosecution. It is a burden which never shifts to the party accused.”**

I have considered the facts established by the prosecution, I am satisfied that the death of the deceased was caused by the accused and no other person. The accused defence that deceased died by committing suicide is not true and is hereby rejected. I therefore find the accused David Wafula Juma guilty of the offence of murder contrary to section 203 as read with Section 204 of the Penal Code and convict him accordingly.

**DATED AND DELIVERED AT BUNGOMA THIS 8<sup>TH</sup> DAY OF MARCH, 2021.**

**S.N.RIECHI**

**JUDGE**