



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.16 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JACKSON ONYANGO NABWALA.....ACCUSED**

**J U D G M E N T**

1. The accused, **JACKSON ONYANGO NABWALA**, faces a charge of murder, contrary to **S.203** as read with **S.204** of the **PENAL CODE**, in that on the 5<sup>th</sup> August 2020 at Breeze-Burumba Estate, Busia County, murdered Veronica Kwamboka.

2. The case for the prosecution was that the accused and the deceased lived together in the accused's house a few metres from that of the accused mother's house and on the material date at about 8.00p.m the accused proceeded to the mother's house where he picked some eggs and left. The mother, **MAGEDALINE ANYANGO NABWALA (PW 1)**, heard him enter the house and asked for some keys in order for him to pick the eggs. She was at the time in the bathroom but at about 5.00a.m. she was informed on phone that the girl who was with the accused in his house had passed away. The girl was a girlfriend to the accused and is the deceased herein.

3. A post mortem carried out on the body of the deceased by **DR. CEDRICK TUMBO (PW 3)** revealed that the deceased died from severe head injury inflicted by a blunt object.

**CPL SAMUEL MWADIME (PW2)** on instructions from his superior officer proceeded to Busia County Referral hospital where he learnt that the deceased died on arrival at the hospital after being taken there by the accused, her alleged "husband". He was arrested within the hospital premises and on completion of the investigations, he was charged with the present offence.

4. The defence case was denial and indication that the deceased died from natural cause after experiencing severe stomach pains.

The accused stated that he returned home from work at about 9.30p.m and found the deceased in pain. She mainly complained of stomach pains which necessitated him to administer first aid on her by fetching raw eggs for her to swallow and vomit. Thereafter, she developed a running stomach and after relieving herself requested for porridge which was prepared and given to her by the accused. The two then went to bed but the accused was later awakened by the deceased's sound of groaning. He noticed some form on her nostrils and fetched transport to rush her to the hospital while she was still conscious. He then learnt from a doctor that the deceased was not alive.

5. The police arrived at the hospital and arrested him. Investigations commenced and he (accused) was thereafter charged with the present offence. He vehemently denied that he was responsible for assaulting the deceased and occasioning her fatal injuries.

6. From all the foregoing evidence, the basic issue presenting itself for determination is whether the death of the deceased was as a result of an unlawful act committed against her by another and if so, whether the accused was the person who assaulted and fatally injured her.

The postmortem report (PEx 1) indicated that the cause of death was severe head injury due to blunt head trauma. This clearly meant that the deceased suffered a fatal head injury as a result of being assaulted by a blunt object. Consequently, the narrative given by the accused that the deceased's death may have been caused by natural causes occasioned by illness was overruled and rendered too remote as to be of any significance to a murder charge.

7. There is nothing in the postmortem report suggesting and/or implying that the death of the deceased was due to severe stomach pains. The report does not at all show that the deceased suffered from any stomach pains prior to her death. Instead, it shows that apart from the head, the deceased also suffered injuries to her nose, mouth and eye. Such injuries clearly suggested and strongly indicated that the assailant was determined to cause grievous harm to the deceased and succeeded in doing so.

8. Under **S.206** of the **PENAL CODE**, malice aforethought is established or deemed to be established where there is an intention to cause grievous harm to any person. It would therefore follow that the person who assaulted and grievously may fatally injured the deceased did so with the intention of causing her death.

Simply put, the assailant committed the offence of murder. The big question is whether the accused was the actual assailant.

9. Basically, no direct evidence was adduced by the prosecution as none of the witnesses testified that he or she saw the accused in the act of assaulting the deceased.

The prosecution therefore sought to rely on circumstantial evidence based on the fact that the accused was the person who was with the deceased just before she was taken to hospital. This was confirmed by his own mother (PW 1) and the investigating officer (PW 2) and was never disputed by himself.

10. Given that the accused was the last person in the company of the deceased prior to her death and further that her death was as a result of being assaulted and fatally injured by something which was blunt it would follow that he was the person who most likely than not was responsible for assaulting the deceased and occasioning her grievous and fatal injuries. Clearly, the suspicion cast upon the accused was not mere suspicion. It was strong suspicion which was confirmed by the strong and credible circumstantial evidence adduced against him by the prosecution.

11. The evidence strongly implied that the accused rushed the deceased to the hospital after realizing that he had assaulted and seriously injured her but not because she was suffering from stomach pains. Unfortunately, the deceased passed away on arrival in hospital and because the doctors noticed that the deceased was seriously and fatally injured they called the police who came and arrested the accused on suspicion that he was linked to the death of the deceased. The suspicion was ultimately confirmed by the indirect evidence availed herein against him.

12. In sum, it is the finding of this court that the deceased death was caused by an unlawful act of assault committed against her by the accused to the exclusion of any other person.

The accused is therefore found **GUILTY** of murder and is accordingly convicted.

**[Delivered and signed this 4<sup>th</sup> day of May 2021]**

**J.R KARANJAH**

**J U D G E**