

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CRIMINAL CASE NO. 63 OF 2015

THE REPUBLIC.....PROSECUTOR

VERSUS

1. EVERLYNE KEMUNTO MOTI.....1ST ACCUSED

2. YUNIA KERUBO AKAMA.....2ND ACCUSED

JUDGEMENT

The accused person was jointly with another whose case has been determined charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The charge was however reduced to manslaughter contrary to Section 202 of the Penal Code during the plea agreement with the co-accused. The accused pleaded not guilty to the charge. To support the charge, the prosecution called four witnesses.

Briefly the prosecution's case is that on 19th September 2015 the deceased Nancy Kwamboka was on her way to Miruka market when she was accosted by a group of women among them the 1st accused. One of the women (1st accused in this case) accosted her and stabbed her on the neck with a knife which she was given by the accused now before this court. The accused and the other women then fled from the scene and left the deceased bleeding profusely. Good Samaritans alerted her husband who went and rushed her to Nyamira County Hospital but she was pronounced dead upon arrival. A post mortem was thereafter conducted on her body as is routine in cases of suspected homicide. It was established that the deceased had a stab wound on the left side of the neck and that she died as a result of massive bleeding.

In her defence the accused made an unsworn statement in which she poked holes in the evidence of the prosecution witnesses. She stated that the witness who alleged to have seen her handing the knife to the 1st accused initially stated he was 25 yards away only to change to 15 yards. She contended that his evidence was not credible and further stated that this case was motivated by family disputes.

Mr. Bwonwong'a who represented her throughout the trial submitted that the prosecution did not prove its case beyond reasonable doubt. He submitted that the evidence of the prosecution witnesses was all hearsay and that of the only purported eye witness was not reliable as he was inconsistent in regard to the distance at which he alleges to have seen the accused hand the knife to her co-accused. Counsel submitted that it seemed that the witness also volunteered information or came forward very late and stated that the witness did not describe the knife. He wondered how the witness could have seen the knife while it was being held by the 1st accused. He contended that the witness could not have seen the knife and further stated that it was not clear how the knife moved from the scene to the police station. Counsel contended that the accused was not party to the altercation between her co-accused and the deceased; that she had no interest in the altercation which was between her co-accused and her husband. There was therefore no motive as to why she would have aided her co-accused. He reiterated the submissions he made at the close of the prosecution's case and urged this court to acquit the accused.

The issue for determination is whether or not the accused person unlawfully caused the death of the deceased in this case. Having carefully evaluated the evidence adduced I am satisfied that the accused person unlawfully caused the death of the deceased in this case. Silvester Opindi Manyara (Pw1) testified that he witnessed the 1st accused stop the deceased on the road and ask her what she was doing there. Before the deceased could answer, the accused now before court emerged from her house with a knife which she gave to the 1st accused who then stabbed the deceased near the collar bone. This is the exact position where the post mortem shows the deceased had an injury. Pw1 knew the accused persons well as they were his neighbours. I am satisfied that since the incident occurred in broad daylight – 5pm – the circumstances prevailing were conducive to a positive recognition which is what Pw1 did of the assailants. He had no grudge against any of the accused persons as to fabricate evidence against them and I am satisfied that he was a witness of truth and that his evidence was credible and trustworthy. I am not persuaded that his changing the distance at which he witnessed the crime from 25 yards to 15 yards renders him an untruthful witness. It could very be that he did not know the distance and was only giving an estimate. He did not after all measure the distance so as to be exact. He remained steadfast even after rigorous cross examination by Counsel and his evidence that the accused gave the knife to her co-accused was consistent. The knife was used to kill the deceased. It is my finding therefore that she aided the 1st accused to kill the deceased. Under **Section 20 (1) (c) of the Penal Code** she herself is deemed to have stabbed the deceased. The **Section** states: -

“20 (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say –

(a)

(b)

(c) Every person who aids or abets another person in committing the offence.....”

The accused did not offer any defence in her statement instead opting to discredit the evidence of Pw1 which I have stated was unshaken. The case against her was proved beyond reasonable doubt. This court finds her guilty of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convicts her accordingly.

Signed, dated and delivered in Nyamira this 7th day of March 2019.

E. N. MAINA

JUDGE