



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NO 28 OF 2015**

**REPUBLIC ..... PROSECUTOR**

**VS**

**SAMUEL KIPROTICH TA..... ACCUSED**

**JUDGEMENT**

The Deceased was found dead in her house while asleep. A post mortem examination was carried out by Dr Mutai Kiplangat at Longisa Hospital on 26<sup>th</sup> November 2015.

Upon examination he observed that the body had constriction marks around the neck. There were no other external injuries. There were no secretions on the mouth and ears.

Internally – The lungs had black spots likely to be from soot. The trachea was constricted. The heart was covered with a thick layer of yellow fat. There were no external injuries on the head. The spinal column was normal.

The doctor formed the opinion that the cause of death was asphyxia due to strangulation or cardio myopathy due to fat around the heart. The doctor recommended a toxicology examination. None of the prosecution witnesses testified to have seen the accused kill his wife. She was found dead in the morning inside the house the two were sharing as husband and wife. There is no evidence of disturbance on the bed or floor where she was sleeping that night. The Deceased had no external injuries apart from the constriction marks on the neck.

The Doctors findings do not appear to be conclusive as to the cause of death. His opinion was that the death was as a result of asphyxia following strangulation or cardio myopathy fat around the heart.

From the evidence before the court it has not been clearly ascertained that death was as a result of strangulation or it was as a result of a heart attack. When the Accused was interrogated as to what happened to his wife he did not seem to have a clue. He did not exhibit any signs of guilt.

He did not attempt to conceal or disturb the scene. He did not attempt to escape up to the time of arrest while at the mortuary.

There is no evidence to the effect that the Accused and the Deceased had a disagreement prior to the demise of his wife. In a nutshell the circumstantial evidence before the court does not irresistibly point to the guilt of the Accused.

No malice aforethought has been proved before this court.

There is no evidence to the effect that the Accused had the intention to kill or maim and that indeed he proceeded to maim or kill.

It has not been established that death was as a result of an unlawful act. In the present case there is the possibility that it was a heart attack that caused the death.

I find that this case has not been provided beyond reasonable doubt.

The Accused is found not guilty on the charge of murder contrary to section 203 of the penal code and is acquitted accordingly under section 322 of the CPC. He is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed in open court this 7<sup>th</sup> day of December 2016 in the presence of Learned Counsel for the state Mrs Kiptoo Learned Counsel for the defence Kenduiwa, Court assistants Mercy/Nicholas.

**M. MUYA**

**JUDGE**

**7.12.2016**