



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 35 OF 2011

REPUBLIC ..... PROSECUTOR

VERSUS

RICHARD WANGILA BARASA ..... ACCUSED

J U D G M E N T

1. **Richard Wangila Barasa (herein the accused)** was charged with murder, contrary to S. 203 read with S. 204 of the Penal Code, in that on the **18th June 2011**, at Perekera Farm in Trans- Nzoia County murdered **Joy Chepchumba**.
2. The case for the prosecution was that the accused was employed as a herds boy by **Jacob Kipkorir (PW1)**, the father of the deceased as well as **Faith Kipkosgei (PW3)** and husband to **Prisca Chelimo (PW8)**. Also employed at Jacob's homestead as a house maid was **Michelle Chepchumba (PW5)**.

On the material date at about 7.00 p.m, **Prisca (PW8)** was at home with her daughter **Faith (PW3)** and the deceased and her housemaid (PW5). They were all in the kitchen before the children and the the maid left for the bedroom to fetch a pullover for the deceased. Suddenly, screams vent the air after the accused emerged holding a Machete (panga) which he used to attack and cause injury to **Prisca (PW8)**, the deceased and the house maid (PW5).

3. Neighbours who included **Rose Nandako (PW2)**, **Paul Omusuru (PW6)** and **George Kiprotich Cheruiyot (PW7)** rushed to the scene and took the injured to the hospital. They did not find the accused.

The deceased suffered injuries which proved fatal. She died while undergoing treatment in hospital. A post mortem was conducted on her body by **Dr. Blastus Kakundi (PW4)** who opined that the cause of death was cardiopulmonary failure secondary to haemorrhage from a deep cervical cut with spinal cord injury. He compiled and signed the necessary post mortem report. (P.Ex.1).

4. **Kipkorir (PW1)** was not at the scene when the incident occurred but he was given necessary information by his neighbours and later proceeded to hospital where the injured members of his family had been taken. His wife (PW8) lost consciousness after being attacked and injured and later found herself in hospital. **PC Chels Were (PW9)**, investigated the case and in the process visited the scene and gathered that the accused had attacked and injured members of **Kipkorir's** family before disappearing. He (accused) was later traced and arrested at Sirisia in Bungoma County. He was thereafter charged with the present offence.
5. In his defence, the accused indicated that he was married with two (2) children and that he was on duty as a herdsman at Jacob's (PW1) farm. He had worked for the family for only forty (40) days but on the material date without knowing what had happened found himself at his home in Sirisia. He was later arrested and informed that he had slashed people with a machete (Panga). He could not remember such incident but was charged with the present offence. It was after his arrest that

- he learnt from his father that he was suffering from a mental problem. He had no quarrel or disagreement with his employer and if he committed the offence then it was because of his mental sickness.
6. From all the foregoing evidence, it is apparent that the act of assault against the family of **Kipkorir (PW1)** and which led to the death of his daughter, **Joy Chepchumba**, was spontaneously committed by the accused who was at the time an employee of the family. He did not deny responsibility for the act but indicated that he could not tell what happened as he had no quarrel or disagreement with the family. **Prisca (PW8)**, also indicated that their relationship with the accused was good. She said that he was a good worker and a quiet person. He readily indicated that he committed the offence without knowing what he was doing and it was much later that he learnt from his father that he was suffering from a mental illness.
  7. The accused did not produce any medical report to confirm that he was suffering from a mental illness at the time of the offence. However, the medical report (P.Ex.2) produced by **Dr. Kakundi (PW4)** in his respect clearly showed that, he had a history of mental illness and was most likely suffering from the mental illness known as Schizophrenia. It is therefore possible that at the time he committed the offence he was indeed mentally sick such that he could not comprehend the consequences of his action nor was he in control of his mental faculties as to distinguish right from wrong. In the circumstances, it cannot be said that he was possessed of the necessary malice aforethought for him to be found guilty of murder.
  8. The offence established and proved by the prosecution against the accused was not that of murder but manslaughter. Consequently, the accused is hereby found guilty of manslaughter, contrary to S.202(1) of the Penal code and is convicted accordingly.

**J. R. KARANJA**

**JUDGE**

[ Delivered & signed this 15th day of July 2015]