



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**H.C.R. CASE NO. 7 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SYLVESTER WAFULA MAKOKHA.....ACCUSED**

**JUDGMENT**

1. A revolting Death happened to Manjongi Ouma Muviri on 1<sup>st</sup> May 2012. The Doctor who conducted a post mortem on her body formed an opinion that the revolting death was caused by “cardio respiratory failure secondary to severe hemorrhage and asphyxia” Sylvester Wafula Makokha (Accused) was charged with her murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. Of the five (5) witnesses called by the Prosecution, only two gave evidence that could incriminate the Accused person.

3. On 3<sup>rd</sup> May 2012 P.C. Christopher Kuto (PW4) was at Busia Police Station when the Accused person turned himself in. He did so in the company of his father. The evidence of PW4 was that the Accused confessed that he is the one who had killed the Deceased who was his Aunt. When the confession was made, PW4 was alone. PW4 in turn took the Accused Person to the Deputy Officer in Charge of the Station (OCS). From the evidence of PW4 it was unclear whether the Accused Person repeated the confession to the Deputy OCS.

4. The further evidence of that officer is that the Accused confessed that the murder weapon was a kitchen knife which he had thrown in the compound of St. Peters Bundokomi Secondary School. Later on the same date, at about 1.52 p.m. the Accused led the police officer and one Cpl. Steven Adenya (PW3) to the compound of the school. The Accused led the officer 30 metres away from the road to a place near some latrines. There he pointed out where the knife was. The knife was recovered. It had blood stains on it and produced as an Exhibit (P exhibit 2) in Court.

5. That the Accused told PW4 that he is the one who killed the Deceased and his action of leading PW4 and PW3 to recovery of the murder weapon amounts to a confession. Section 25 of the Evidence Act (Chapter 80 Laws of Kenya) defines a confession as follows:-

**“a confession comprises words or conduct, or a combination of words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making it has committed an offence.**

6. What is disturbing is the manner in which the police dealt with the alleged confession. The law requires that an Out of Court confession be made to a police officer (other than the Investigating Officer) who is not below the rank of an Inspector of Police and in the presence of a third party of the suspect's choice (Section 25A of The Act. Secondly, so as to ensure that it is voluntary, the confession must be received in compliance with the Evidence (Out of Court Confession) Rules 2009. PW4 was not only the Investigating Officer but an officer whose rank was below that of an Inspector of Police. PW3 on his part was a Corporal, a rank below an Inspector of Police. Their ranks aside, the two officers did not even pretend to comply with The Evidence (Out of Court Confession) Rules, 2009 in receiving the alleged confession.

7. For those reasons the Statement and conduct of the Accused Person cannot be admitted by this Court as evidence. The said confession was the pillar of the Prosecution case and without it, the entire case must collapse. It would not be harsh at all to squarely blame that failure to the casual manner in which the police investigated this matter.

8. The only outcome possible is that I do hereby acquit the Accused Person of the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. He is at liberty to go unless held for some other lawful cause.

Dated, Signed and Delivered at Busia this 19<sup>TH</sup> day of OCTOBER. 2015.

**F. TUIYOTT**

**J U D G E**

In the presence of :-

Oile C/Assistant

Owiti For State

Jumba .For Accused