

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

HCCR NO. 3 OF 2012

REPUBLIC PROSECUTOR

VERSUS

EUNICE NJERI NJIRIRI ACCUSED

J U D G M E N T

Eunice Njeri Njiriri (herein, the accused) is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 8th January, 2012, at Wamuini village Trans – Nzoia County, she murdered John Njiriri.

The case for the prosecution is that on the material date, the accused and her sister Susan Njambi Njiriri (PW4), were at their home when a quarrel ensued between them. The quarrel degenerated into a fight involving the usage of a stick.

In the process, the accused aimed the stick at her sister who ducked thereby causing the stick to hit her (sister's) son. The son aged about two and a half years suffered serious injury and was rushed to hospital at Kitale before being transferred to the Moi Teaching and Referral Hospital in Eldoret where he died while undergoing treatment. A post mortem was conducted after necessary identification of the body by **Geoffrey Thungu Thagichu (PW2)**, a cousin to the accused. The post mortem report (P.Ex.2) indicated that the cause of death was intracranial haemorrhage due to severe head injury due to blunt force trauma.

Jane Nduta Mbai (PW1), a neighbour to the accused assisted to take the deceased to hospital after he was injured. The necessary report was made to **P. C Hassan Wafula (PW3)**, who visited the scene and retrieved the stick (P. Ex.1) allegedly used by the accused at the time.

Susan Njambi (PW4), confirmed that she fought with the accused and in the process her son (the deceased) was hit with the stick and suffered fatal injury. She contended that the accused did not intend to hit the deceased but her and that the deceased was hit after she ducked. **P. C Kennedy Magige (PW5)**, investigated the case. He said that the initial charge against the accused was that of assault but the same was enhanced to murder after the deceased passed away while undergoing treatment.

In her defence, the accused confirmed that she quarrelled and fought with her sister (PW4) and in the process the deceased was hit with a stick which she was using in the fight.

She contended that her intention was to hit her sister but not the deceased and that the deceased was hit because her sister ducked and avoided the stick.

From all the foregoing evidence, it is undisputed, that the deceased suffered fatal injuries after being accidentally hit by a stick aimed at the accused sister during a fight. Clearly, the necessary intention on the part of the accused to cause fatal injury or any injury to the deceased was lacking. However, the accused and her sister were involved in an unlawful act of fighting with a clear knowledge that their children were within the vicinity and were exposed to danger. The two were therefore responsible for the fatal consequences of their unlawful act which ultimately led to the death of an infant. Both of them acted in a very foolish manner but the accused ought to have known better not to aim a stick at the opponent who was with or near a child. For lack of malice

aforethought; the offence proved against the accused by the prosecution was not that of murder but manslaughter.

Consequently, the accused is herein found guilty of manslaughter contrary to section 202 (1) of the penal code and is convicted accordingly.

J. R. KARANJA,

JUDGE

11/02/2014

(Delivered and signed this 11th day of February, 2014).