



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MURDER CASE NO. 28 OF 2007

REPUBLIC.....PROSECUTOR

VERSUS

LUCY AWUOR ODHIAMBO.....ACCUSED

J U D G M E N T

1). The accused was charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars are that on the 12th day of July 2007 at Siru sub location in Ukwala location Siaya district within Nyanza province murdered **Gabriel Owuoth Otieno**.

2). In proving their case, the prosecution called five witnesses. **PW1 Dr Rapenda**, produced the post mortem report on behalf of Dr. Esieba who conducted the post mortem. According to the said doctor the deceased cause of death was haemorrhage due to fracture with contribution of head injury.

3). **PW2 Mariana Akumu**, was with the accused person who had come to visit her. In the course of the day at around 4 p.m the accused got hold of one of the children and according to her she wanted to break her neck. The deceased restrained her.

Late that night at around 1 a.m the accused broke the door of the room in which the deceased was sleeping using a metal rod. She proceeded to attack the deceased and the attempt by PW2 to restrain the accused were futile as she equally charged against her and she was forced to flee. She also hit PW2's hand.

4). As a result of PW2's screams people came who included **PW3 Paul Owino Ondoo**. He told the court that when he heard screams emanating from the deceased's home which was about 300 meters from his home he rushed to the scene.

By the time he arrived he found the accused having been subdued by Patrick and Juma who had tied her using a rope. He assisted in taking the deceased to the hospital but unfortunately he died on the way. PW4 identified the body at the mortuary.

5). **PW5 Patrick Oduor Radido**, heard the screams and rushed to the scene. His home was about 50 meters from the deceased home. He helped in restraining the accused person. He was assisted by one Juma. He said that the accused was very wild and uncontrollable. By then the deceased had been badly injured.

- 6). The accused offered unsworn evidence. She argued that she was acting in self defence as people including the deceased were taking her things.
- 7). Having heard both parties together with their respective submissions there is no doubt that it was the accused who assaulted the deceased. The murder weapon was produced including the post mortem report. The accused did not deny this fact but her argument was that she was acting in self defence.
- 8). In the course of her submission the defence counsel argued that the accused person was having mental lapse or what is commonly referred to as lucid moments and that there was every possibility that the accused may have suffered the same at the moment. The court did observe the demeanor of the accused. She at some point was evasive and could not respond to the directions of her defence counsel.
- 9). From the evidence on record I have no doubt in my mind that the deceased died as a result of the injuries sustained when attacked by the accused. But was there any motive for the attack? Was there any provocation by the deceased? Was she under any influence or was she in her right state of mind? These are the pertinent issues in this matter.
- 10). The events of the day does not show any significance to the attack. There was no defence by the accused person on the fact that she wanted to break the neck of one of the children. There was no apparent cause for her attacking the child.

However, it appears that this took place at 4 p.m. About 8 hours later she attacked the deceased who had stopped her from assaulting the child. I do not find any motive or provocation by the deceased against the accused in regard to the events of that day.

- 11). From the evidence on record it appears that the accused had a premeditated plan. The action of taking up the rod and forcefully breaking the door so as to gain access to where the deceased was, was indeed an act of premeditation. Further, any act of stopping her from assaulting the deceased by PW2 was met with resistance including assaulting her.
- 12). Was she of unsound mind? No evidence was led to this conclusion. Subsequently, the psychiatrist Dr. Onyango put her on medication but there is no evidence to suggest that the accused prior to assaulting the deceased suffered any mental illness. It cannot be said as argued by the defence counsel that she suffered lucid moments and thus there was every likelihood that during the incident she suffered from such fit. It would have been in order to place on record any evidence that she had a history of mental illness.

In the premises I do find that the attack on the deceased by the accused proved that there was malice aforethought. The accused was simply a visitor to the home and it appears that for whatever reasons she vent her anger against an old man who had earlier in the day stopped her from inflicting injuries upon a child. I find that the prosecution has established its case beyond reasonable doubt and I proceed to convict her accordingly.

Dated, signed and delivered at Kisumu this 12th day of March, 2014.

H.K. CHEMITEI

JUDGE