



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 72 OF 2012

REPUBLIC..... PROSECUTOR

VERSUS

SR.....ACCUSED

JUDGMENT

SR hereinafter referred to as the Accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars are that:-

“On the 4th day of November, 2012 at [particulars withheld] Village, Samburu Kwale County murdered MR”.

The prosecution called eight (8) Witnesses in support of their case. The Defence called the Accused who gave unsworn statement.

The brief facts of this case are that the Deceased is the daughter of the Accused.

At the time of her death she was aged four (4) years old. It is the prosecution case that it is the Accused who poisoned her daughter and hence causing her death.

PW 1 MR (a child of tender years) did testify that on the 4th day of November, 2012 their mother (Accused) gave the deceased poison and she started vomiting. **PW 1's** elder brother **PW 2** was in his house when he heard the Deceased crying and he decided to go and check. He found the Deceased in the house of their mother (Accused) and she was crying and vomiting. They thought that she had been attacked by evil spirits, and they first decided to offer prayers for her. They later decided to take her to Hospital but she passed on before arrival at the Hospital at Samburu.

Doctor Irene Muramba (**PW 5**) conducted a post mortem examination on the body of the Deceased and found greenish material around the nose and mouth. The trachea had food material extending to the bronchia. The stomach was distended. She took specimens of the stomach, Small intestines and liver, a kidney for further analysis by the government chemist.

The Government analyst **GEORGE OKELLO OGUTU (PW 6)** upon receipt of exhibits which were (1)

A red bottle marked “C” containing white substances. Upon examination he found that the substance therein was Diaznoh which is a pesticide used for killing insects.

The investigations in this case were conducted by Inspector Jason Odhiambo who had received information that the Accused had poisoned herself and her two children one of whom had died and she was admitted at Samburu Health Centre together with one of them. A bottle was handed over to him by the clinical officer at the Hospital and he later instructed one of his officers to take it to the Government chemist for examination.

This Witness did proceed to inform the Court that he did not know who took the red bottle to the clinical officer, who handed it to him. The same container went missing at the Government chemist laboratories and was not produced in Court as exhibit.

The Doctor who performed the post mortem report did testify that she did submit the stomach, the small intestines and the liver for further testing as it was important to rule out poisoning.

There is no evidence whether these samples were examined by the Government chemist so as to establish whether there was poisoning.

As there was no testing of the samples taken, (namely stomach, small intestines, kidney and liver) it cannot be said that the cause of death was established.

I find the investigations in this case to have been shoddy. This case has not been proved beyond reasonable doubt and the Accused is acquitted of the charges of murder contrary to Section 203 as read with Section 204 of the Penal Code. She is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this **16th** day of **September, 2014**.

.....

M. MUYA

JUDGE

16TH SEPTEMBER, 2014

In the presence of:-

Learned State Counsel Mr. Jami

Learned Counsel for Defence Mr. Kariuki

Court clerk Musundi