



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 52 OF 2010.

REPUBLIC::: PROSECUTION.

VERSUS

BENSON JUMA WANYAMA :::ACCUSED.

J U D G M E N T.

The accused, **Benson Juma Wanyama**, is charged with murder, contrary to section 203 read with section 204 of the penal code, in that on the 25th September, 2010 at Kiminini Market, Trans Nzoia County, he murdered Alice Nanjala.

The case for the prosecution was that the deceased and the accused were related and lived separately in one block of houses.

On the material date in the night, aunt to the deceased, **Grace Nakhumicha Wanyama (PW1)**, was at home when she was awakened and informed that her “daughter” had been killed. She left the house and went near a nearby kiosk where she found her “daughter” (deceased) crying and groaning. She was bleeding from the head and was taken to the hospital where she died while undergoing treatment.

Christopher Sikuku (PW2), proceeded to the home of the deceased after she had been taken to hospital. He saw therein a trail of blood from the bed to the door. The deceased was his daughter. He saw her body at the hospital and noted that it had a cut on the forehead. He said that she lived with a sister-in-law and Benson (accused)

Gibson Kasabuli Jirongo (PW3), also saw stains of blood in the deceased's room and was later shown a piece of timber by police officer's who alleged that it had been used to hit the deceased. He identified the body of the deceased for post-mortem purposes.

Dr. Edward Odhiambo (PW4), produced the post mortem report compiled and signed by his colleague Dr. Ng'ang'a, who performed a post mortem on the body of the deceased.

P.C. Kennedy Madinge (PW5), was on duty at Kitale police station on 26th September, 2010, at 2.40 p.m. when one George Esau, reported that the deceased had been killed by her cousin, the accused. He (PW5) proceeded to the Kitale District Hospital where he found the body of the deceased with serious injuries. He commenced investigations and in the process visited the scene of the offence. He noted that the door to the deceased's house had been broken. He later retrieved a stick which was allegedly used to assault the deceased. Ultimately, he arrested and charged the accused with the present offence.

In his defence, the accused denied the offence and stated that he arrived home from work at 9.00 p.m. but did not find his wife. He was informed by the children that she had gone to her sister's place. He went there to look for her. He found and conversed with her before returning home with their child. She never returned home and at midnight he went to bed only to be awakened later by screams of a person saying “**I am being killed**”. He went out of his house and joined other neighbours already there. They all found the deceased on the ground and reported the matter to a nearby AP camp even as the deceased was rushed to hospital. At the AP camp, he (accused) was seized in order to assist in investigations. He contended that he normally assisted in paying the deceased's house rent. That, she was a seller of illicit liquor (changaa) and that he found her on the ground having been assaulted. He denied any involvement in her death.

From all the foregoing evidence it is apparent that the deceased met her death after being assaulted while inside her house on the material night. Indeed, the postmortem report (P. Exh. 2) indicated that the cause of death was cardiorespiratory arrest due to severe head injury.

The issue for determination was therefore whether the accused was the person responsible for inflicting the fatal injury against the deceased. He vehemently denied any responsibility and implied that he was arrested and charged without good cause. He also implied that he had no reason to harm the deceased as they got along well and he bore no grudge against her.

The obligation to prove his guilt and thus discredit his defence lay with the prosecution. He was under no obligation to prove his innocence.

Basically, there was neither direct nor indirect evidence implicating the accused with the offence. It appeared that he was merely suspected by his own relatives without justifiable grounds or because he lived in the same block of houses or rooms with the deceased.

The prosecution witnesses and in particular Grace (PW4), Christopher (PW2) and Jirongo (PW3) merely established that the deceased was assaulted and fatally injured. None of them saw the assailant.

Christopher (PW2) believed that the accused killed the deceased but did not offer any evidence confirming his belief. The investigating officer (PW50, did not even shed any light as to why he arrested and charged the accused. He talked about recovering the murder weapon, a stick (P. Exh. 1), yet failed to state in what circumstances the stick was recovered.

Gibson (PW3) indicated that the stick was found by Administration police officers and that it was blood stained.

There was no indication that the blood stains on the stick were analyzed to confirm that they belonged to the deceased.

Apparently, P.C. Madige (PW5) did not carry out any meaningful investigation. He only charged the accused because he was the only suspect brought forward. He did not even find it fit to call George Esau, as a witness yet he (George) was the person who reported to him that the deceased had been assaulted and killed by the accused, her cousin.

The I.O (PW5) also implied that apart from the accused there was another suspect i.e. the accused's wife who escaped and could not be traced.

It is quite clear that the accused was “dragged” to the court and charged with a serious offence for which no serious investigations were conducted. No wonder, the burden to prove the charge against the accused was not discharged as required.

Consequently, the accused is hereby found not guilty as charged and is acquitted accordingly.

[Delivered and signed this 5th day of August, 2014.]

J.R. KARANJA.

JUDGE.