

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL CASE NO. 3 OF 2010.

REPUBLIC ::::::::::::::::::::::::::::::::::::::: PROSECUTOR.

VERSUS

RENKEI TOROKWA ::::::::::::::::::::::::::::::::::::::: ACCUSED

J U D G M E N T.

The accused, **Rengei Torokwa**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 28th December, 2009 at Siriwa village Sigor Pokot murdered Chepapas Rengei.

The case for the prosecution was that on the material date at about 6.00 p.m., the accused who was husband to the deceased Chepapas Rengei and father to **Dickson Rengei (PW1)**, **Irene Senegei (PW2)** and **Kopus Rengei (PW3)** arrived home in a state of intoxication and asked for food from the deceased. The food was not available and this caused a quarrel between him (accused) and the deceased. In the process, he chased Dickson who ran towards a slope. He turned to the deceased and chased her towards a valley while holding a rungu (club) like stick. Thereafter, Irene (PW2) heard screams and on checking found the deceased in the valley but could not talk. She (deceased) was carrying a baby who was untied from her back and taken away by Irene (PW2).

Kopus (PW3) also saw the accused chasing the deceased down a valley. He then heard children screaming and on checking found the deceased lying down. She was already dead.

The accused's brother **Dominic Piranyang (PW4)**, identified the body of the deceased for purposes of post mortem and **Cpl. Peter Terek (PW5)**, arrested the accused when he went to Kapenguria Police Station to report the incident.

Cpl. Collins Opiyo (PW6), investigated the case and preferred the present charge against the accused.

The post mortem report (P. Exh. 1) produced herein by **Cpl. Zablon Sikoli (PW7)**, showed that the cause of death was cardiorespiratory arrest secondary to dislocation of atlantas occipital joint.

The defence case was that on the material date the accused had gone to harvest gold together with one of his sons. He met his son-in-law and instructed him to take a child to hospital. He followed later and found that the child had been treated. He thereafter went to a shopping centre to buy maize and was joined by his son-in-law with whom they went for a "changaa" drinking spree and in the process he "blacked out". On the following day, his son-in-law informed him that his wife (deceased) had passed away. He became shocked and confused. He was arrested and taken to his house where he saw the deceased's dead body. He was thereafter taken to the police and charged. He could not tell what had happened as he was very much intoxicated on the material day.

Basically, from all the foregoing evidence, it is apparent that the deceased met her unfortunate death after being chased by the accused following a domestic quarrel related to food. Not only did the accused chase the deceased, he also chased his son Dickson (PW1) who saw him chasing the deceased thereafter and so did Irene (PW2) and Kopus (PW3). All these are his children and they all saw him chasing their mother and noticed that he was intoxicated but not to the extent that he "blacked out" as he stated. They disproved his suggestion that he went to a place where he drank "changaa" and "blacked out" such that he did not return home and did not know what happened on the material date.

The evidence by the prosecution through the accused's children (PW1, 2 and 3) strongly pointed out to the fact that the accused's act of chasing the deceased down a valley culminated in her death. What was not made certain was whether the accused assaulted the deceased and inflicted upon her fatal injuries. Nobody saw the accused assaulting the deceased. The witnesses only saw him chasing her. It may as well have been that the deceased while being chased by the accused fell down and suffered a fatal injury.

In essence, there is herein reasonable doubt as to whether the deceased died as a result of the accused's unlawful act against her. Chasing a person by itself is harmless unless it is followed by an unlawful act of assault leading to fatal injuries or any other injuries.

Consequently, the prosecution failed to discharge its burden of proof by showing that the accused by means of an unlawful act caused the death of the deceased, his wife, even though while labouring under a drunken stupor he chased her down a valley.

The accused is thus found not guilty as charged and is hereby acquitted.

[Delivered and signed this 3rd day of October, 2013.]

J.R. KARANJA.

JUDGE.