



REPUBLIC OF KENYA

High Court at Kakamega

Criminal Case 24 of 2010

STATEPROSECUTOR

VERSUS

**1. HARON CHAKAYA KABAGI
2. JACKSON KADEMI NAKEVAACCUSED**

RULING

The 1st accused **HARON CHAKAYA KABAGI** and the 2nd accused **JACKSON KADEMI NAKEVA** are charged with the offence of murder contrary to Section 203 as read with Section 204 Penal Code.

The particulars of the offence are that on the 27th March, 2010 at Lusabwa village, Mudete Sub-location, in Sabatia district, within Western Province jointly murdered **ROBAI IMALI KINGILI**.

In support of their case, the Prosecution called a total of seven witnesses.

The prosecution case is that on the material day, the deceased who was an elderly woman aged about 77 years was spotted taking a call of nature at a neighbours compound. The said neighbours had gone for funeral leaving nobody at the homestead. A neighbour asked the deceased to leave the said compound. The deceased returned to the same compound again and was seen carrying away a paper bag. The matter was reported to the village elder by the occupiers of the compound where the deceased had defecated. The deceased was followed to her house by the mob that had gathered. The deceased removed some goods from her house for the mob to see if the paper bag she had allegedly been seen carrying from the neighbour's compound amongst other items. The paper bag was suspected to contain a child's faeces. The said paper bag was not there. The mob telephoned the sons of the deceased to come and witness what was going on. None of them turned up. The mob then escorted the deceased to the market where one of the sons worked. The deceased was made to carry to the market all the goods that she had removed from her house. The items included rotten meat, faeces, pieces of skin, human air, rotten flour, pieces of paper, children's books and pens, headscarf, cement, oxtail etc.

The mob frogmarched the deceased to the market. The son to the deceased disappeared when he saw the deceased and the mob. One young man at the market burnt some of the items the deceased had carried and released some back to the deceased. The mob dispersed and the deceased went home.

According to PW2, **NAFAS JAREGA CHABANGA**, a son to the deceased, the deceased was injured during the incident and was limping. The deceased was treated at Sabatia District hospital, Mbale hospital and at a clinic in Nairobi.

A report of the assault was made to the police. The condition of the deceased deteriorated and she passed away on 21st July 2010. According to the post mortem report, the cause of death was "cardio respiratory

arrest due to the 2nd lung collapse”. The date of the assault is reflected in the charge sheet as 27.3.10. This death occurred after a period of about four months from the date of the alleged assault. There is no evidence of any correlation between the earlier treatment record after the assault and the cause of death as reflected in the post-mortem .

All the seven prosecution witnesses testified about another incident when the deceased tried to commit suicide by drinking paraffin and jumping into a river. The suicide attempt came after the assault. It is not clear from the prosecution evidence whether the deceased died of the injuries sustained during the assault or from injuries sustained during the attempted suicide.

None of the witnesses saw the accused persons assaulting the deceased. The evidence by the son (PW2) that the mother (deceased) told him that she was assaulted by the accused persons is contradicted by the evidence of the rest of the six prosecution witnesses.

The evidence on record fails to establish a prima facie case. Consequently, the accused persons are acquitted under Section 210 CPC.

Delivered, dated and signed at Kakamega this 11th day of October, 2012

B. THURANIRA JADEN
J U D G E