

REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI
CRIMINAL APPEAL 95 OF 82

BETH KATILE W/O CHARLES MUNYAO APPELLANT

AND

REPUBLIC RESPONDENT

(CORAM: KNELLER, JA, CHESONI AND NYARANGI, AG. J.J.A.)

Murder - Defence of intoxication - whether available where the necessary intent for murder is established - effect of inadequate summation by the judge to the assessors.

The appellant was convicted and sentenced to death for the murder of her husband. She had been charged together with Paul Musila Ndunda of jointly murdering her husband. Musila offered a plea of guilty to a lesser charge of being an accessory after the fact to murder and was sentenced to 7 years imprisonment.

The appellant was tried at the High Court and at the close of the case, the trial judge made a full summing up to the assessors asking for their opinion on three questions namely: had the Republic proved beyond any reasonable doubt the husband was dead? That he was unlawfully killed? And that it was the appellant who unlawfully killed him? The assessors found on the affirmative on the first two questions but on the third question found that the appellant had not been proved by the same standards to be responsible for the deceased's death. The trial judge disagreed with the assessor's opinions and went ahead to convict the appellant.

The appellant appealed to the Court of Appeal on the grounds that, inter alia, the trial judge erred in law in improperly holding that the appellant had formed the necessary specific intent prior to becoming intoxicated.

Held: (i) That the learned judge failed to take into account section 13(4) of the Penal Code which requires the courts to take into account intoxication for purpose of determining whether the person charged had formed any intention specific or otherwise without which he would not be guilty of the offence. (ii) The appeal was allowed, conviction of murder quashed and the sentence of death set aside. In lieu thereof the appellant was convicted of manslaughter and on consideration of her special circumstances, a lenient sentence running from the date of conviction to the date of appeal decision imposed.

Cases Referred to:

1. Sharnpal Singh Pritam Singh -v- Republic (1960) EA 762, 780 (CA-K).
2. Mancini -v- D PP, (1942) AC 1. Saa/GBS