



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO.E007 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

VINCENT OMUSE OPAT.....ACCUSED

J U D G M E N T

[1] The accused, **Vincent Omuse Opat**, was charged with murder, contrary to **S.203** as read with **S.204** of the **Penal Code**, in that on the night of 13th/14th April 2021 at Osiret village Machakus – Teso South within Busia County murdered **Esnas Auma Jamila**.

[2] The case for the prosecution was that the accused and the deceased were man and wife and on the material date at about midnight, their young daughter left their house and awakened some neighbours informing them that an incident had occurred at their house and that her mother (**deceased**) was dead.

[3] The neighbours who included **Caroline Isogori (PW 1)** and **James Isogori (PW 2)** proceeded to the scene and found the accused there. They saw the dead body of the deceased lying on the ground floor in the house.

James (**PW 2**) apprehended the accused and took him to the nearby police post.

Cpl. Wilson Adungo (PW 3), learnt that the accused made a report at the Machakus police post to the effect that the deceased had committed suicide.

[4] The officer (**PW 3**) interrogated the accused who stated that his wife hanged herself with a rope inside their kitchen. Accompanied by his colleagues, the officer visited the scene on the material date and found the dead body of the deceased lying on the ground facing upwards. The body was removed to the mortuary and the matter handed to the Directorate of Criminal Investigations (**DCI**) for further investigations.

[5] **Cpl. Humphrey Mureithi Njeri (PW 4)** of the DCI Teso

North/South carried out the necessary investigations by visiting the scene of the alleged suicide and noted some signs of a struggle. He produced herein a post mortem report (**P.Ex 1**) which indicated that the cause of death was asphyxia due to strangulation. He then concluded that the cause of death was not consistent with suicide and after recording necessary statements from the witnesses he preferred the present charge against the accused.

[6] The defence case was a denial and a contention by the accused that the deceased had left the matrimonial home after a disagreement between them. She was however, present at home on the material date during the hours of day. The accused left her

there and proceeded to work. He returned home later and found the deceased absent from the house. He went looking for her but in vain. He then returned home for the night and on the following day proceeded to work as usual.

[7] After work, the accused returned home, cooked and had dinner with his daughter before going to bed. Later, the barks of the family dog awakened him. He ventured outside the house to enquire and followed the dog to the back of the external kitchen. It was there that he found his deceased wife hanging from the top with a piece of cloth (**lesso**). He screamed for help and neighbours arrived at the scene including a village elder who reported the matter to the police.

[8] The accused contended further that he loved his wife and could not have killed her. That, they had recently married but she hanged herself.

The offence of murder occurs when a person intentionally causes the death of another.

The evidence by both the prosecution and the defence raised no dispute with regard to the fact of death of the deceased by strangulation.

[9] The postmortem report (**P.Ex 1**) confirmed as much by pinpointing asphyxia due to strangulation. What therefore emerged as the major issue for determination was whether the deceased strangled herself thereby committing suicide or whether she was strangled by another person who thereby committed the offence of murder against the deceased.

[10] The suicide narrative was floated by the defence and the contrary narrative of murder was floated by the prosecution. However, there was no burden placed on the accused to prove his innocence. Rather, the burden to prove beyond reasonable doubt that the deceased was murdered by the accused lay squarely on the prosecution and this could be discharged by sufficient and credible direct or indirect evidence.

[11] The prosecution did not offer any direct evidence and sought to rely on circumstantial evidence to the effect that the accused's neighbours Caroline (**PW 1**) and James (**PW 2**) were called by the couple's young daughter and notified that an incident had occurred at their home and the deceased was dead.

[12] Cpl Humphrey (**PW 4**) in the course of investigations noted signs of a struggle inside the couple's house. In cross-examination, he indicated that additional signs of a struggle were evident in the postmortem form which indicated that the deceased had bruises on her body. He therefore opined that the suicide theory was inconsistent with the postmortem report.

[13] Indeed, the postmortem report (**P.Ex 1**) showed that the deceased had bruises on the left side of the neck indicating that a soft material was used to strangle her. Bruises were also noted on the left forearm and wrist.

It cannot be fathomed that the presence of bruises on the deceased's left forearm and wrist could be consistent with the suicide theory more than a struggle between the deceased and somebody else just prior to her demise.

[14] The only other adult person who was at the scene at the material time was the accused, a fact which he did not deny and was in any event, confirmed by the witnesses (**PW 1**) and (**PW 2**). It was unfortunate that the couple's daughter who alerted the neighbours of the incident was not called to testify, but her report to the neighbours that something had happened in their house and that the mother was dead was consistent to the fact that a struggle had occurred before the deceased died.

[15] Most importantly, the neighbours did not state that on arrival at the scene they found any item which strongly suggested that the deceased had committed suicide. The accused reported to the police that a piece of cloth (**lesso**) was used by the deceased to commit suicide.

However, none of the neighbours saw such an item at the scene.

[16] Circumstantial evidence is evidence of facts that the court can draw conclusions from. It is capable of implying that an offence was committed by the person charged.

In this court's opinion, the circumstantial evidence led by the prosecution against the accused was sufficient and credible enough to establish and uphold the narrative that the deceased was strangled and killed by the accused to the exclusion of any other person rather than the narrative that the deceased committed suicide by strangling herself to death.

[17] The accused's defence was thus disproved and discredited such that it could not save him in any way. In fact, the evidence against him portrayed him as a "**smooth operator**" who in this case planned his moves very well and executed them with precision hitherto "leaving a trail of blood" behind. The case against him was proved beyond reasonable doubt by the prosecution. He is hereby found guilty as charged and is convicted accordingly.

J.R. KARANJAH

J U D G E

[Dated & Delivered this 10TH day of MARCH, 2022]



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