



**Republic v Mwarandu (Criminal Case 3 of 2018)  
[2023] KEHC 23098 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23098 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
CRIMINAL CASE 3 OF 2018  
SM GITHINJI, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JACKSON RANDU MWARANDU ..... ACCUSED**

**JUDGMENT**

1. Jackson Randu Mwarandu is charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) chapter 63 Laws of Kenya.
2. The particulars of this offence are that on the unknown date and time between January 25, 2018 and February 3, 2018 at Salama Village in Lamu West sub-county the accused, murdered Cyrus Njau Kamuri.
3. In this case the accused herein had previously been charged together with another, one Leah Wambui Njoroge, who died in the course of the trial.
4. The prosecution case is that the deceased herein, prior to his death was living with one Leah Wambui Njoroge as his wife. The accused herein is their neighbour at Salama Village, Majembeni, Lamu. Pw-5 is the Nyumba Kumi Elder of Salama Village. On January 29, 2018 Leah Wambui Njoroge went to Pw-5 and reported to her that her husband went missing on January 25, 2018. They called his brothers, friends and neighbours who all said they had not seen him. Pw-5 advised her to report to the village elder. She reported to the village elder (Pw-1) on January 31, 2018, who wondered why she had not reported earlier to the chief or the police. She reported at Mpeketoni Police Station and according to Pw-6 she reported that on January 28, 2018 she missed her husband; He had left to seek for a job in Mombasa.
5. The elders and villagers organized to carry out a search for him. They agreed to meet on February 3, 2018 in his compound. They went as arranged. They divided themselves into several groups. They



searched in different areas within and around his farm. One group reported that they had found an area where there used to be borehole in the farm which was freshly refilled and covered with canvas. They suspected the body could have been buried therein. They called the area chief. The area chief called police officers from Mpeketoni Police Station. Leah Wambui Njoroge was there. Exhumation commenced. As they removed the soil, they saw two feet. The body had been buried upside down. They proceeded and exhumed the body of the deceased. Those present recognized it using the clothes as it was decomposing. Leah Wambui Njoroge was taken in as a suspect. The entire process was photographed by police. The body was taken to Mpeketoni Sub-County Mortuary.

6. A postmortem was conducted by Pw-3 on February 13, 2017. He noted that the skull was crushed from the left side of the face. Grey matter was appearing through fracture line. He opined that the cause of death was due to severe heavy blunt trauma to the head, on the left side of it, with crushed skull.
7. Pw-5 stated that Leah Wambui Njoroge had not been married to the deceased for long. Their marriage was not blissful. She had reconciled them several times after disagreement.
8. Pw-6's evidence is to the effect that he investigated the case and when he questioned Leah Wambui Njoroge about it, she said she was in love with the accused herein, Jackson Randu Mwarandu. She never wanted the deceased to know of the illicit relationship. They decided to eliminate him to cement their relationship and to inherit his big parcel of land which is said to be over 10 acres.
9. The police decided to arrest the accused herein as a suspect. They first went to search the deceased's house from which they got a blood stained mattress, bed, net and bedsheet. They were collected as exhibits. They went to the accused's house which was about 200 metres away. They found him. He was questioned about the offence and denied it. In his house the police carried an axe and a club. He was also arrested.
10. They got hair and nails of the deceased and together with the bed, bedsheet, net, mattress, axe and club forwarded them to the Government Chemist for examination. A report was got after one year and a half but was not helpful in the matter given the time lapse.
11. The accused gave unsworn testimony in his defence. He denied the offence. He stated that he was employed by a Somali man to work in his farm. On February 3, 2019 he was in the farm with his wife and two children. When he later left the farm he noted presence of a crowd at the deceased's home. He joined them. The deceased had gone missing and the villagers wanted to carry out a search. They searched in groups and in the farm they noticed an area covered with a canvas. Leah Wambui Njoroge was asked about it. She said there used to be a borehole of which her husband filled in January. The canvas was removed and they noted the filling was fresh and could not have been in January. The chief was called and police from Mpeketoni. The accused assisted in exhuming the body and they got it. Leah Wambui Njoroge was arrested. Later at 9.00pm he was arrested by police from his house. They took an axe which was in the house. He was later charged. He denied the offence.
12. This court must now determine as to whether the offence against the accused is proved by the prosecution beyond reasonable doubt.
13. There is no dispute in this matter that one Cyrus Njau Kamuri was murdered and the body secretly buried in a borehole within his farm. The only issue in dispute, and of which this court needs determine is whether the accused herein took part in commission of the said offence.
14. As was rightly submitted by his counsel, the only evidence which incriminates him with the offence is that of Pw-6, the investigating officer, who alleged that Leah Wambui Njoroge (now deceased) told him that she had an illicit love relationship with the accused of which she did not want her husband to know



about, and she arranged with the accused to eliminate him to enable them cement the relationship and inherit his huge parcel of land, said to be over 10 acres.

15. The investigating officer did not state how he took the statement of Leah Wambui Njoroge. We do not know whether it was a charge and cautionary statement or a confession. Save for it, there is no any other evidence whatsoever in support of it. Even Pw-5 the Nyumba Kumi elder who disclosed that the marriage between the deceased and Leah Wambui Njoroge was not blissful and many times she had assisted in reconciling them, never stated of being aware of a love relationship between the accused and Leah Wambui Njoroge. The evidence suggests the deceased was killed in his house, and there is no evidence that the accused ever visited the house prior to his death or even thereafter. The axe and club allegedly got in his house were not blood stained and there is nothing to suggest they were the murder weapons.
16. Leah Wambui Njoroge did not offer evidence as an accomplice or co-accused person to support the allegation by the investigating officer. Even if she did, though such evidence is admissible, the court cannot convict on it unless corroborated. In the case of *R v Baskerville*[1916]2 KB 658, the court held that such evidence would require corroborative evidence, rendering it probable that the story of the accomplice is true and is reasonably safe to act upon. As earlier on expressed, there is no such corroborative evidence which was availed by the prosecution. As such, there is no evidence which reasonably connects the accused to the offence.
17. He is accordingly acquitted of the offence of murder and is set free unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT GARSEN THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

.....

**S.M. GITHINJI**  
**JUDGE**

