



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 64 OF 2012

REPUBLIC.....PROSECUTION

VS

PAUL MWENDA MURIUNGI.....ACCUSED

JUDGMENT

The accused Paul Mwenda Muriungi was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. Particulars are that the accused Paul Mwenda Muriungi between the nights of 18th & 19th September 2012 at Nkanda Sub Location Igembe North District within Meru County murdered Lucy Karimi.

The deceased persons father said deceased and accused had one month old child – a girl child whom the deceased left to her mother when the accused called her late in the evening at 5.00 pm on 18th September 2012 and she never returned home and the baby cried the whole night. The next morning PW1's neighbour Kithia told her Mwenda the accused herein had killed Karimi and the body was at accused persons farm. PW1 Kobia also informed him that Mwenda had killed his daughter. When he went to scene he found his daughter body had wounds on the neck made by a wire. He said the clothes had sign of struggle. Accused was found at Shikashika shop next to the farm where the deceased body was found. PW1 said he saw the accused call his daughter in the evening. PW1 said the accused and deceased had been married for over 10 years but they used to have conflicts and accused used to chase her away and she returned to her parents. PW1 said the deceased had been home for 2 months and had delivered her baby at home. PW1 said the accused used to live on the land where the body of his daughter was found.

PW2 Jacob Gituma said that on 19.9.2012 he was coming from Maua at 1.00 am when he met accused beating his wife Karimi. That he told the accused to stop beating her. That accused stopped beating Karimi and he left and went away. He said that he found the two 100 metres away from accused persons house. He said he saw the accused and the deceased go towards their house which was in their shamba. PW2 said the accused and the deceased had 3 daughters. That when he heard that Karimi had died the next day he told the chief and other villagers what he had witnessed at night and he recorded a statement at Laare Police Station. Pw2 said that land had been tilled freshly and there were marks of the deceased body being dragged to where it was found. That deceased had a stab behind the head and she had no clothes but her private parts were covered with banana leaves.

PW2 said he left Maua at 2.30 am. He said Karimi was being beaten inside the shamba which has fence and gate and is used to farm miraa belonging to accused persons father. PW2 said he had a torch and he saw Mwenda and Karimi. He said Karimi only had a skirt as Mwenda had removed her blouse and she was half naked. He said after he had told Mwenda not to beat Karimi and he stopped he left them going to the house and so he didn't raise alarm.

PW3 Beatrice Karanyuni the deceased person's mother said that on 18th September 2012 at 4.00 pm the accused found her at home. She was at home with the deceased, deceased person's child and deceased person's father. She said Karimi the deceased and Mwenda used to live together but they had fought and Karimi came back home as Mwenda chased her while she was expecting a baby and she gave birth at PW3 home. She said the child was 5 months old by the time of this incident. She said the deceased left her with the child and accompanied Mwenda the accused and didn't return. That at 9.00 pm her other grandchild came and said that Karimi was with Mwenda at the Cinema in the church and they were coming. That at 6.00 am the next morning Kobia woke her up to go and see where Karimi had been killed in the farm of Mwenda's father which is 3 homes away from her home. She said she found her daughter dead and had a scar around her neck. They reported murder at Laare police station and chief of Antubochiu arrested Mwenda.

PW3 said the deceased body was taken to Maua Methodist Hospital Mortuary and after post mortem it was released to them for burial. PW3 said police broke the gate to the farm where body was as it was locked and farm has K. Apple fence. PW3 said that PW4 told her she left Karimi and accused standing about 100 metres away from home.

PW4 R M 14 years old said he was with Karimi – her aunt and the accused at the cinema in church. She said that the accused asked her where the deceased was and he told her to go and call her. That when she called the deceased she gave her torch to give to Mwenda the accused herein but she didn't find him where she left him and she took torch back to her aunty. That shortly thereafter Karimi saw Mwenda

and they left for home. PW4 said that she walked a head of Mwenda and Karimi as they were walking slowly and when they got near home the deceased told her to go ahead as she would come. She went home and told her grandmother that she left Karimi on the way coming. That Karimi didn't come back and in the morning Kobia came to call her grandmother and she heard her grandmother scream. That she followed Kobia and her grandmother to the place where Karimi had been killed in the farm but near the road leading to Laare and Kipkonda. That she had a scarf around her neck and her clothes were torn.

That Mwenda was taken by Chief when he came to scene as members of public wanted to beat him. She said Mwenda and Karimi had 3 children and they lived 150 metres away from the grandparents' home. She said the farm where Karimi's body was found had miraa tree. PW4 said when she left Mwenda and Karimi they were talking in a friendly manner.

PW5 Joseph Muthuri Muriungi said that on 19.9.2012 at 1.00 am he heard screams from PW6 farm. He said PW6 farm is separated from his by a road. He said it is a lady who was screaming and pleading that neighbours should not let her be killed. He said he had a torch which he used to identify that it was Lucy Karimi who was screaming and she had fallen about 2 metres away. That he told the accused to stop beating the deceased but he threatened that if PW5 continued arguing with him he would kill him instead. That he stood there for 4 minutes and then went back to sleep. He said the next day at 6.00 am he found many people standing at the farm where Karimi was killed. He said the body was near the house whereas he saw her being beaten near the gate. He said the gate was locked and that he saw the body on the ground with a scarf around the neck.

The Chief was called and he arrested Mwenda and he was taken to Laare police station. PW5 said he saw accused and the deceased struggling. He said accused was the watch man at the farm and the gate was locked. PW5 said there was nothing he could do after he told accused to stop beating the deceased and he refused and he didn't tell anyone. He said that accused and deceased lived that way. He said accused differed with the father and came to live on the separate farm where the father grew and harvested miraa.

PW6 accused persons father received report of murder of Karimi from Karimi's father and mother on 19/9/2012 at 7.00 am. He was informed his son the accused killed the wife. He followed the 2 to where he had made a house for the accused about ½ km and found a big crowd of people at the road because the gate was locked. He said from the road he was able to identify the one killed as Karimi and she had a scarf around her neck. He proceeded to Laare Police Station to call police. He said the chief arrested the accused at scene and they found him at police station. He said PW6 said he used to pay accused to guard the Miraa where he lived as there was no other guard. He said accused had the key to the gate. He said police broke the gate. He said the farm had Kiapple fence but one could see inside the farm.

PW7 Dr. Njeru Charles produced post mortem Report for the deceased Lucy Karimi indicating the clothes were soiled with dust/soil. He said they observed deprivation of oxygen at time of death. The right eye was swollen and had injuries and mouth and nostrils were frothing and blood discharging. There was a cut on Occipital region 2 cm in length. He said it appeared accord was used on the neck. The left foot had mild bruises. He said the skull had a fracture on Occipital region. It was established cause of death was cardio-pneumony arrest due to asphyxiation due to strangulation.

PW8 Inspector Abel Okadapali was based at Laare Police station at the time of incident herein and he investigated the murder and preferred charges against the accused person. He said that accused was escorted to the station by Assistant Chief of Muganda Sub location in company of several members of the public and he was placed in cells. IP Abel in company of P.C Otieno visited scene and found the deceased body in a miraa farm. He said the neck had scratches and had head injuries and bruised on the back. He said it appears the body was dragged from the house to the fence and there was obvious dragging marks. Body was taken to Maua Methodist Hospital mortuary. He said the farm had a fence about 2-3 metres high and also had a gate. He recorded statements of the witnesses who saw accused beat the deceased but he dared them to go near him. He said he established the deceased and the accused had separated but he didn't establish the reason.

In consideration of the evidence of the prosecution 8 witnesses the accused was placed on defence on 12.5.2017. Accused gave sworn statement and said that on 18.9.2012 the deceased was staying with her parents whereas he stayed at his place of work at Atheru Rujini. He said he was employed by Ali Meja and he was staying with him. He said that on 18.9.2012 he went to take money for children's upkeep to Karimi at the father's home. That he called her and got change from a canteen opposite their home and gave her 300/= and then went back to Atheru. He said Karimi didn't accompany him. That in the evening of material day he reported on duty as guard at Ali Meja's bar and he didn't leave the bar until the next morning. He said he was not at the cinema as put in evidence of PW4. He said PW4 was coached to fabricate him. He said deceased body was found in one of Joseph Muriungi's parcels of land about 100m from the father home.

He said the farm had barbed wire and Kiapple fence. He said the farm had iron sheet gate which was always locked with a padlock. He said Kithinji and Kobia the sons of Joseph Muriungi were the ones who were guarding the miraa and the house in the farm was being used by the 2. He said nobody found him beating Karimi because he was at his place of work.

He said when body was discovered he was outside the farm and he didn't know who opened the gate. He said he was arrested by the chief with assistance of his father and the deceased person's father. He said he took his wife back to her parents when his father denounced him and he went to look for work. He said he didn't separate with his wife because of disagreement but because he had been chased from the farm and he had nowhere to keep his family and they agreed he should go back to stay with her parents.

He said the farm in dispute belonged to his grandfather and the grandfather established him in the farm when he got married. He said his father denied him access to the miraa in the farm. He said Jacob Gituma who is known to him lied when he said he saw accused beat his wife.

He admitted he called Karimi as stated by the deceased mother but that he didn't leave with her and he could not tell if she didn't go back home. He said PW4 was coached to come and he saw accused at cinema and that he left them behind with Karimi walking slowly. Accused said there were other guards at the father's miraa farm. He said his father fabricated him to exonerate himself because the body found in his miraa farm.

He said his boss accompanied him to the farm early in the morning when they got information of the death. He said that he arrived at scene

30 minute later on motorbike when he got the information summons were issued to Ali Meja whom accused claimed was his employer but at the next defence hearing date the defence counsel said they had information the witness was deceased. Submissions were filed by defence and prosecution and in consideration thereof and inconsideration of the prosecution and defence evidence this court is to determine:-

The prosecution has proved beyond all reasonable doubt that:-

- a) Death was caused by an act and/or omission of the accused.
- b) That the act and/or omission was actuated by malice.
- c) That the accused was properly identified and placed at the scene of the offence.

The accused person confirmed the evidence of Pw1 and PW3 the father and mother of the deceased that he called the deceased was truthful. He denied that the deceased accompanied him thereafter. This could be true or may not be true. PW4 however said that accused and the deceased met at the cinema at the church on the material evening and were walking together slowly on the way back while talking in a friendly manner after 9.00 pm. He said he was walking a heard of them and when they were about 150 m away from home the deceased told him to go ahead as she was following PW2 said that while coming from Maua he found the deceased and the accused inside the compound of the miraa farm where accused persons house was and the deceased didn't have a blouse and the accused was beating her and he restrained him. That when he stopped beating her he left them going to the house and he proceeded to his home. He said he didn't raise alarm or call anyone else as accused heeded and stopped beating the deceased.

PW5 heard screams at about 1.00 am on 19.9.2012 and he got out and found accused beating the deceased and when he tried to tell him to stop he threatened that if PW5 continued to argue with him he would keep him instead.

Evidence coming out of the relevant witnesses is that although the miraa farm where the deceased body was found belonged to accused persons father the house in the farm was occupied by the accused and the deceased before the accused chased away the deceased prior to this incident. Particulars PW5 and the deceased person's father testified to the fact that it is accused who guarded the miraa farm and the father found him for that work and there was no other guard. PW5 said his home is separated from the farm by just around and that is why when he heard screams of a female calling for help from neighbours he got out. What does not add up is why PW2 and Pw5 who knew the parents of the accused and the deceased lived a stone throw away did not take action to report what was doing on. It is weird that one could go to sleeping a young woman in distress to be killed in the manner that the deceased was killed by her husband. It is an act of irresponsibility that PW2 and PW5 didn't save the life of the deceased herein accused person had to remove himself from scene of offence and claimed he was on duty on the material night and gave reasons why the witnesses allegedly fabricated him. He was given opportunity to call his alleged employer but he came back he was deceased. He didn't question prosecution witnesses about the alleged employer and the existence or otherwise of the alleged employer is doubtful.

The post-mortem conducted on the body of the deceased and observations made confirmed the deceased died out of strangulation and presence of a scar/lesso around her neck. The evidence against the accused and supporting prosecution's case that he killed the deceased Lucy Karimi are overwhelming. This court is satisfied that prosecution has discharged the burden and has proved beyond all reasonable doubt that accused committed the murder of his wife. I do find him guilty as charged and he is convicted under Section 215 C.P.C.

The accused person's father explained why he sent accused to live in the house at the miraa farm and there was no evidence that he had anything to do with the murder. It is accused who was last seen with the deceased – PW4. It is accused who was seen by both PW2 and PW5 beating the deceased and in the morning she was found dead in the same compound where accused lived and which keys to the gate it is only accused who had.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 27th DAY OF JUNE 2018.

IN THE PRESENCE OF:

C/A:-Penina

Prosecution: - Mr Kiarie for State

Accused: Present in person

Mrs Ntarangwi Advocate for accused.

HON. A.ONG'INJO

JUDGE

Mr Kiarie

We don't have previous records but we submit the offence is serious. The court should consider the painful death the deceased went through. I pray for Maximum sentence.

Mrs Ntarangwi Advocate in Mitigation

I urge the court to treat accused with leniency. He is remorseful. He is a young man. The accused and deceased was blessed with 3 children whom the court should consider. The accused was arrested 5 years and 9 months ago and he has been in custody. If the deceased had survived she should have told us what happened that led to fight. May court exercise discretion.

Court

The accused person lured the deceased to her death without considering she was having a breast feeding child to take care of. He can't say now he cared for his 3 children when he wantonly took away the life of their mother. He deserves to be punished. He doesn't deserve anyone's mercy.

Order

Accused sentenced to suffer death in accordance with law. Right of Appeal 14 days explained.

HON. A.ONG'INJO

JUDGE