



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 45 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

PETER KINYUA MWANGI.....ACCUSED

JUDGMENT

The accused herein, **Peter Kinyua Mwangi**, [hereinafter referred to as the accused and Peter interchangeably] is charged with the offence of murder contrary to **Section 203** as read together with **Section 204** of the **Penal Code**.

The **particulars** of the offence are that on the 22nd day of April, 2009 at Kiagombe, Embakasi within Nairobi Area, murdered **M M**.

The state called seven (7) witnesses in support of its case.

Shadrack Mbuya Muiya (PW1), testified that on 22nd April, 2009 he was a resident of Kiangombe village in Embakasi. He rented one room in a plot comprising of 14 rooms. He had several neighbours including PW1. Whose room was 10 or so feet away from his residence. The accused herein was staying in one room with a lady who had a child. The plot had electricity connection.

On 22nd April, 2009 about 2 am he heard some people quarreling for about 2 hours from the premises occupied by the accused. He did not bother to check what the quarrel was all about because he considered it a domestic issue. In the course of the quarrel he heard a child crying. Thereafter he heard the lady staying with the accused shouting the name Irene and calling for help as her child was being killed/murdered.

Out of curiosity PW1 came out of his room and stood by the second door from that of the PW1. On looking on the opposite direction, he saw the accused a little distance from his room. He noticed that the lady and the accused were naked. A group of people residing in the plot and beyond gathered and apprehended the accused. They demanded that accused disclose where he had hidden the child. Eventually accused disclosed that he had thrown **a rat** in the pit latrine. PW1 saw blood-stains on the corridor leading to the pit latrine. The distance between the room occupied by the accused to the pit latrine was about 10 feet. The room occupied by the accused was the last one on the row where PW1's room was.

That at all material time there was electricity light in the plot. In particular there was security light adjacent to the room occupied by the accused. The light was strong enough to illuminate the environs of

room occupied by PW2 and his companion.

J N G (PW2), was informed at 8.40 am on 22nd April 2009 by her daughter, Monica W N, that her child had been killed by her (child's) father and thrown into a pit-latrine. By that time the daughter had not introduced her husband to the family. He had not even seen his grand-daughter. He went to see the body of the child at the mortuary. He advised his daughter to report the incident to the police. After the post-mortem the remains of the child was buried. He saw the accused for the first time in court.

M W N (PW3), is the mother of the deceased. She was staying with he accused under the arrangement of *come-we-stay* relationship since December 2008. By April 2009 the deceased was about four (4) months old. She had known the accused for 3 months before she delivered the deceased. Upon delivery she named the child **M M**.

On 21st April, 2009, a Tuesday, they retired to bed at about 11.00 pm. About 2.00 am Peter woke up and went out for about 5 minutes. When he returned she asked her to return to bed. Towards that end the accused put off the candle. After a short while while accused told PW3 that there were evil spirits in the room. She then told him to get rid of them. Accused then woke up and light a candle. Immediately the lights went off he started strangling her (PW3). In time he lifted PW3 and placed her on top of the deceased. He then climbed on top of her so that both of them were now on top of the child. In the meantime she frantically struggled to free herself from the accused in vain. Accused finally freed her, and went for the baby. He strangled the baby and threw him on the ground. Thereafter he went for PW3 and held her by the throat. Among other things, he pulled off the braids on her hair. Then he told PW3 that the baby was a "*jini*". He implored her to forget about the baby because they would later have their own baby. He invited her to go back to bed.

She could not get sleep. She woke up and started screaming. This went on for about 2 hours but nobody came to her rescue. She pleaded with accused to leave the baby alone but he once again started strangling the baby. At that point in time, she ran to wake up her neighbours who came confronted the accused and beat him up. He told the neighbours that the child was in the pit latrine. The neighbours went to search the pit-latrine and recovered the body of the child. Police were summoned and arrested the accused. Although accused used to drink that night he was not drunk. The couple's immediate neighbours were Faith and Kioko.

Dr. Jane Wasike Simiyu (PW4), a pathologist attached to the City Mortuary performed a post-mortem on the body of the deceased, M M. The head bore a fractured skull. She was of the opinion that the deceased died of head injury due to blunt trauma. She dated and signed the post-mortem report on 30th April 2009. She tendered the post-mortem report as exhibit 1.

No 88649 P.C Edgan Nyale (PW5), was on duty at Embakasi Police Station on 22nd April, 2009. Together with Corporal Mukami they were instructed to by the OCS go to Kiangombe village to rescue a suspect who was subjected to mob-justice. They found that the suspect had already been arrested by the citizens. They then re-arrested him on learning that he had killed a baby and dumped the body in a pit-latrine. He escorted the accused to Embakasi Police Station.

No 232198 Chief Inspector Lawrence Muchangi (PW6), was the O.C Crime at Embakasi Police Station at 6.30 am on the material day. P.C Edgar Miyake informed him that he received information from Police – Radio Control Room that a mob wanted to lynch someone at Kiangombe village.

He facilitated the arrest of the suspect. He returned the suspect to his house where he met his (suspect's) wife and members of the public who demolished the pit-latrine where the child had been dumped. The body was recovered and thereafter taken to the City Mortuary to await post-mortem .

Dr. Zephaniah Kamau (PW7), a surgeon attached to the Police Surgery in Nairobi examined the accused on 30th April 2009 the accused had sustained an injury which he classified as harm. Accused told him that he sustained the injuries as a result of mob-justice. His other findings were that the accused was mentally fit to plead to the charge. He tendered the P3 form as exhibit 3 herein.

At the close of the prosecution's case, having carefully analysed the evidence adduced by the prosecution, I came to the conclusion that a *prima-facie* case had been established thereby warranting the court to put the accused on his defence. I then put the accused on his defence after duly complying with the provisions of **Section 306 (2)** of the **Criminal Procedure Code**.

The accused gave unsworn statement in his defence. He recalled the events of 17th day of April, 2009. While engaged as a turn-boy in Nairobi he went to his work place. He was advised to go home because on that day they were not going on safari. On arrival at his house at about 9.30 am he found two women – Njoki and another lady whose name he could not remember. The two ladies brought a message that an aunt to his wife was hospitalized at Kijabe Mission Hospital.

On 18th April 2009 he was given 3 day off by his employer. On 21st April 2009 he did not go back to work because the driver of the lorry he was attached to as conductor told him he was in Western Kenya. On that day he went to Mukuru Kwa Njenga,. From Mukuru kwa Njenga he went to Kiangombe. He settled at a bar Christined SUPER – BREEZE at which place he watched VIVA CUP on Television.

Afterwards he walked to his house and slept. After putting off the light he heard some noise under the bed. His wife thought it was a rat. He struck a match-box to put on the lamp in vain. He groped in the dark and heard iron sheet creaking. Then he heard the door being opened from inside. He concluded that it must a human being. The intruder moved towards the gate of the plot. He followed the intruder up to the gate but found the gate locked. He tried to catch him but he escaped through the gate. He went back to his house but found the bed had rolled up to the wall.

He called the name of his wife but she did not answer. He came out of his house and went towards the toilet. He found his wife crying. She claimed that he had killed their only child. That he wanted to kill her too. He searched for the child but could not find her. When he came out of the house he found 3 men who assaulted him with pangas and rungu. He tried to fight back in vain. He then saw his wife in company of some people. These people also assaulted him on a false claim that he had killed his child and threw the body in the pit-latrine. He became unconscious. On regaining consciousness he found the police guarding him. Subsequently he was charged with the offence of murder. He denied the charge.

On the available evidence the accused and PW3 had entered into *come-we-stay relationship*. PW3 had a baby girl then aged about 4 month. The said child was borne out of wed-lock.

On the 22nd of April 2009, the couple retired to bed at about 11.00 pm. About 2.00 am accused woke up and went out of the room for about 5 minutes. On coming back he started strangling his wife. Subsequently, he lifted his wife, and placed her on top of the deceased. He then climbed on top of her. Henceforth, both of them were now sleeping on top of the child. She tried to free herself and the child in vain. Finally when PW3 freed herself, the accused went for the baby strangled and threw her on the ground.

In addition thereto the accused then pulled off the braids on her hair and claimed that the baby was a “*Jini*”, which loosely translated in English mean a ghost. The episode took about 2 hours. Finally neighbours heard her screams and came to her rescue. They confronted and assaulted the accused when they heard her story.

Dr. Jane Wasike (PW4), a pathologist attached to the City Mortuary performed a post-mortem on the body of th deceased. She formed the opinion that the cause of death was head injury due to a blunt trauma. She signed and dated the post-mortem report on 30th April 2009 and tendered it in evidence as exhibit No. 2

The case thus turns on credibility of PW2 as against that of the accused. I had the advantage of assessing the demeanour of the accused. He appeared to me to be a person who is economical with the truth. I equally had the advantage of assessing the demeanour of PW3. She appeared to me to be a person who is a witness of truth. I prefer the evidence of PW3 to that of the accused. I rest my judgment

on her testimony.

Against that backdrop of evidence I find and hold that it is the accused who caused the death for deceased by strangling her apart from lying on top of the mother with the child below the mother on the bed. If there was any doubt left in the respect of *malice-forethought*, [**Section 206** of the **Penal Code**], it was put to rest by the evidence that he threw the child in the pit-latrine after killing her.

In the result, I find that the prosecution has proved the case against the accused beyond any reasonable doubt.

Accordingly, I find the accused guilty as charged and convict him of the offence of murder contrary to **Section 203** as read together with **Section 204** of the **Penal Code**. I sentence the accused to suffer death as prescribed by the appropriate law, after taking into due consideration all the mitigating circumstances of the case.

Dated *signed* and *delivered* at **Nairobi** this 26th *day* of February **2015**.

N. R. O. OMBIJA

JUDGE