



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 25 OF 2013

REPUBLIC.....STATE

VERSUS

ROBERT SAMUEL SICHANGI.....ACCUSED

**JUDGEMENT**

The accused **SAMUEL SICHANGI** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that:

***“On the 11<sup>th</sup> day of March 2013 at Karagita, Naivasha Municipality within Nakuru County murdered SUSAN WANJIRU”***

The accused entered a plea of ‘**Not Guilty**’ to the charge. His trial commenced on 28/5/2014 at which trial the prosecution called a total of three (3) witnesses in support of their case. **PW2 VW** was the 8 year old daughter of the deceased. She told the court that on 11/3/2013 she was at home with her mother. One man whom **PW2** names as ‘**City Boy**’ came to their house. The accused and deceased quarreled over money. He picked up a knife and proceeded to stab the deceased on the throat. After the act this ‘**City Boy**’ ran away.

At the close of the prosecution case the accused was found to have a case to answer and was placed onto his defence. The accused gave an unsworn defence in which he denied any involvement in the murder of the deceased. The court must now analyse the evidence on record with evidence on record with a view to determining whether the charge has been proved beyond reasonable doubt.

The offence of murder is defined as follows by Section 203 of the Penal Code, Cap 63, Laws of Kenya.

***“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”***

Thus the prosecution must prove the following key ingredients beyond reasonable doubt in order to establish the offence of murder

1. Proof of the fact as well as the cause of death of the deceased
2. Proof that the deceased by an unlawful act or omission caused the death of the deceased.

3. Proof that said unlawful act or omission was committed with malice aforethought.

On the fact and cause of death of the deceased there is no dispute. **PW3 PETER NJINO** is the father of the deceased. He confirms that he went to the mortuary and identified the body of the deceased for the post-mortem.

**PW1 DR. TITUS NGULUNGU** performed the autopsy on the body of the deceased. He noted a single stab wound to the neck. **PW1** concluded that the cause of death was “**severe chest injury with massive heamorrhage due to a single stab wound to the upper chest**”. This was expert medical evidence which was in no way challenged by the defence. I find that the deceased met her death due to a stab to her neck.

Having proved the fact and cause of death the prosecution must go further to prove that the accused is the person who stabbed and killed the deceased.

**PW2** who was a minor was the only witness to the incident. She stated that her mother and a man whom she refers to as ‘**City Boy**’ came home together, and engaged in a quarrel about money. The accused then picked up a knife and stabbed the deceased before running away.

In cases where the case turns upon the evidence of a single indentifying witness, courts must exercise great caution in relying on such evidence. In the case of **MAITANYI Vs REPUBLIC [1986] KLR 198** it was held as follows:

*“1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is know that the conditions favouring a correct identification were difficult.*

*2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description”*

This incident occurred at night. Indeed **PW2** states that she was asleep when her mother and ‘**City Boy**’ came home. They woke her up from slumber. It was dark. In her evidence **PW2** confirms that

*“There is no power in the plot”*

The witness goes on to state that she was able to see the accused by way of a candle which was near the door. A candle does not ordinarily emit much light and would only illuminate the area directly around it. On a dark night one candle alone would not provide sufficient light. There is no mention that there was any moonlight on the night in question.

It must be remembered that **PW2** being a young child must have been in great fear to see a man attack and stab her mother. She states that both she and the deceased were screaming. **PW2** did not mention whether the ‘**City Boy**’ was a man she knew prior to this incident and was therefore able to recognize him or his voice. Given the circumstances it was dark, **PW2** had just woken up and she must have been in great fear. I am hesitant to rely on her identification of the accused as the perpetrator of this offence.

**PW2** mentions a care taker called ‘**Mwaniki**’ who she says was present and who probably saw who entered their house. This caretaker was an important witness to provide corroboration of the child’s testimony. Failure to call him greatly weakens the prosecution case.

Neither the arresting officer nor the investigating officer were availed as witnesses. The arresting officer was a necessary witness to explain why, how and where he arrested the accused. The investigating officer’s evidence was crucial to explain how and why he linked the accused to this offence.

**PW2** persistently refers to the accused as ‘**City Boy**’. She did not appear to know his true names. The

given name of the accused in this case is '**Robert Samuel Sichangi**'. No alias name is included in the charge sheet. It is only the investigating officer who could explain how he came to connect the accused to this name '**City Boy**'. The failure of the investigating officers to testify further weakens the prosecution case.

On the whole I find that the prosecution case was weak. The identification by the single witness was not reliable. The possibility of a mistaken identify cannot be ruled out. The prosecution have failed to prove this case beyond reasonable doubt. I therefore enter a verdict of '**Not Guilty**' and I acquit the accused of the charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated this 21<sup>st</sup> day of December, 2016**

Ms Kerubo holding brief for Wanjiru

Mr. Motende for DPP

**Maureen A. Odero**

**Judge**