



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL CASE NO. 41 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**A G M .....ACCUSED**

**JUDGMENT**

**Background**

1. A G M (the accused) and E W M (the deceased) met sometimes in 2012/2013. They shortly moved in together in a cohabitation arrangement. At the time, E was legally married to one J W M with whom they had 2 minor children but had separated owing to domestic challenges. J W M (PW7) lived in Migori town while E moved to Nairobi to seek employment. Their minor children were left in the care of E's parents (PW4) and (PW10). It was during that time that E met A G.

2. In the course of her stay with A G, E and her husband (PW7) started communicating and decided to resolve their misunderstanding. They agreed to meet at E's parents' home in Nyahruru to resolve their misunderstanding and separation. According to witnesses, E travelled to Nyahururu and following family talks, she purposed to return to her matrimonial home. She then set on a journey to Nairobi to break her relationship with A G and pick her belongings. On arrival, she was picked by A and they went to A' house in Ruiru. That was the last time she was seen alive.

3. When E went missing, her brother S G M (PW1) alerted their parents. He also inquired from A G and he said that he too was looking for her. Together they reported the matter to the police at Juja and began searching for her. The search finally ended when pieces of E's body were found in River Murera by the search party. The head and palms were found in a disused pit larine near the accused's house. In the course of the search, A G was suspected of foul play and was arrested. Investigations pointed to him as the prime suspect. He was arrested and subsequently charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars in the information were that on 23<sup>rd</sup> May 2012 at [particulars withheld] in Ruiru District within Kiambu County murdered E W M.

**The Prosecution case**

4. The prosecution called a total of 18 witnesses. PW1 S G M was the deceased's brother. He was with her on 18<sup>th</sup> May 2013 when she informed him that she was travelling home to Nyahururu. They spoke on phone n 22<sup>nd</sup>. They agreed to meet on 24<sup>th</sup> but when he called her on 23<sup>rd</sup> she could not be reached. He went to look for her at the accused's house but she was not there. He met the accused who told him that he had met the deceased on her way to his house to pick her clothes. He (the accused) said that he escorted her upto the bridge and that he later saw her aboard a matatu. S G and the accused agreed to

make a report. Separately the accused made a report at the AP Post while S G made one at Juja Police Station.

5. S G said that he later received a text message from A G from phone NO. [particulars withheld] telling him that they (meaning A and others) had seen a hand of a woman in the river. PW1 also received another text which read “*we murdered E with Baba M and threw her into the river*”. On receiving these messages, S G made a report to the police. In the meantime A G turned up at the AP Post Muigai Inn where he had reported that his wife was missing. The police searched him and retrieved two sim cards. They confirmed that one of the numbers was the one used to send messages to PW1. A search party made up of the deceased’s family, neighbours, the accused’s friends who were motor cycle (“boda boda”) riders recovered human body parts from the Murera river and the head and palms from a disused pit latrine near the accused’s house.

6. A M W testified as PW2. She was the deceased’s cousin. She told the court that the deceased spent the night of 22<sup>nd</sup> May 2012 in her (W’s) house on arrival from her parents’ home in Nyahururu. She left on 23<sup>rd</sup> May 2012 to go and pick her clothes from Ruiru where she was staying so as to come and live with her. She (the deceased) informed her of a ‘boda boda’ man who was interested in her (the deceased). W told the court that the deceased told her that the ‘boda boda’ man had send her a text and that her husband saw the text. She did say what followed.

7. Several witnesses testified to having participated in the search for the deceased. Other than her brother S G M (PW1), her father H M M (PW4), there were S W K (PW3), D R T (PW5) and J G C (PW6) who were relatives and friends of the deceased’s family. Acquaintances and colleagues of the accused in the boda boda business namely D C M (PW8) and J K (PW9) testified that they had interacted with the accused on or about the time that the deceased disappeared and the search was on.

8. Several police officers testified in this case. Administration Police Constable Emma Wangui Kimani of Muigai Inn (AP Post) testified as PW11. She recalled that sometimes in 2011, she had handled a case between A G (the accused) and his wife one W. W had reported that A had refused to give her share of the money he made from the boda boda business, which was their joint venture. On 26<sup>th</sup> May 2012 A G reported to her that his wife (the deceased) was missing. He showed threatening messages on his phone and reported that he suspected his wife Waringa in the disappearance of the deceased. APC Emma Kimani stated that after interacting with the accused, the police suspected him and detained him. That was after it turned out that he was the one in possession of the telephone sim numbers from which threatening messages had been sent to PW1.

9. No. 219549 C.I. Simon Nyabochwa Kibori was the station commander at Juja Police Station. On 25<sup>th</sup> May 2012 he was informed by AP officers at Muigai AP Post that a human body had been seen at the bridge near Murera. He proceeded to the scene and collected 2 pieces of human thighs and took them to Thika District Level 5 hospital where the doctor on duty one Dr. Njoroge confirmed that it was human flesh. He took the same to the mortuary awaiting identification and post mortem. On 27<sup>th</sup> May, 2012 the deceased’s brother S G (PW1) reported to C.I. Kibori at Juja Police Station that his sister was missing. PW1 showed him the threatening SMS on his phone. One SMS from No. [particulars withheld] informed PW1 that his sister had been cut and thrown into the river. Meanwhile AP officers informed C.I. Kibori that A G had been arrested at the AP Post. He proceeded to the post together with the D.C.I.O. When A G was searched they recovered from his inner wear 5 sim cards one of which bore the number [particulars withheld] which had sent an SMS to PW1. The police officers then escorted A G to his house. They found the house very clean and well arranged. On closer search, however they saw some blood stains on the wall and recovered blood stained gumboots and a panga.

10. In the course of the search the police were led by members of the public to a disused pit latrine some 50 metres from the accused’s house where they recovered a skull, some hair and palms. At that point A G said he was willing to show them where the other body parts were in the river. They did not proceed to the river as the mob was by then baying for the accused’s blood. C.I. Kibori then handed over the accused to the D.C.I.O. who later took him to a magistrate to record a confession. C.I. Kibori confirmed

in cross-examination that he was the one who recovered the body parts and that though they were in a decomposing state the head and palms could be identified by the deceased's relatives.

11. The deceased's body parts, the panga, pair of gumboots, paint scraping and blood samples of the deceased's mother and brother were submitted to the Government Chemist for DNA analysis. Government analyst Paul Waweru Kang'ethe (PW 15) carried out the analysis and concluded that the DNA generated from the flesh matched the DNA generated from the blood stains on the panga and gumboots. The DNA generated from the piece of flesh had 99.9% chance that G W G was the mother of the donor of the piece of flesh. Paul Waweru Kangethe produced his findings as Prosecution exhibit No.9

12. No. 83931 Cpl. Kopota Galwersi of cyber-crime unit testified as PW16. He had carried out forensic analysis of 3 mobile phones Nokia 2012 (MFI. 10) Nokia E 300, Nokia 1690 (MFI. 12) as well as sim card Nos. [particulars withheld] and [particulars withheld] . He testified that he was not able to ascertain whether there was any communication between the phones as he was not able to subject the forensic gadget UFED to the 3 phones. He however extracted 22 messages between the numbers submitted. He produced a report as Exhibit No. 13.

13. Photographic evidence of scene of crime was captured by No. 78316 Cpl. Erick Mugendi. He testified as PW17. He told the court that on 20<sup>th</sup> May 2012 PC Rono of CID Ruiru requested him to accompany him to Thika Hospital Mortuary to take photographs of a human body which had been cut into pieces. They took two photographs of human flesh of some part of the body. On 5<sup>th</sup> June 2012 he visited Murera area where he photographed a demolished pit latrine from which a human head and palms had been recovered. PC Mugendi produced the photographs [Exh. No. 1(a) – (f) and report (Exhibit No. 14)

14. No. 57861 Cpl. Virginia Mwangangi of CID Ruiru testified as PW18. She was one of the officers who were instructed by the D.C.I.O. Ruiru C.I. Stephen Mureithi to proceed to AP Camp at Muigai Inn where a suspect (the accused) was being held. She became the investigating officer in the case. In her lengthy testimony, Cpl. Mwangangi told the court that when the accused was searched, he was found to have 5 sim cards and one of the sim numbers turned out to be the one from which sms has been sent to the deceased's brother stating that the body was in River Theta. Cpl. Mwangangi produced the sim cards [Exhibit NO. 3(a) –(e). She also produced 3 phones Nokia 2012 (exhibit NO. 10) and Nokia E200FM [Exhibit No. 11]. The witness also produced a Nokia phone said to belong to PW1 [Exhibit No. 12]. That was the phone on which the threatening messages had been received.

15. Cpl. Mwangangi further narrated to the court how the accused led them to his house at Ruriro Village within Ruiru. On arrival, he opened the door and the officers searched the house. They found a blood stained panga under the bed and a pair of gumboots. There was dry blood on the wall and she scrapped it out and packed it for analysis by the Government Chemist. Cpl. Mwangangi produced both the gumboots and panga as exhibits 4 and 5 respectively. The witness further testified that she took a blood sample from the deceased's mother (G W G) and brother (S M G) so that the sample could be compared with the body parts recovered to confirm identity of the deceased.

16. Cpl. Mwangangi further described to the court the location of the scene. She produced a sketch map [Exhibit No. 15] showing the location of the accused's house which stood at some 50 meters from River Theta (also referred to as Murera) the pit latrine from where the body parts were recovered and the boda boda stage from which the accused operated. Cpl. Mwangangi testified that on 3<sup>rd</sup> June 2012 the accused informed her that he wanted to see the D.C.I.O. C.I. Stephen Mureithi. She escorted him to his office. She learnt from the D.C.I.O. that the accused had expressed a wish to make a confession. Arrangements were made for him to be escorted to Thika Law Courts on 4<sup>th</sup> June 2012 and he made his confession before Hon. Mutuku, then Chief Magistrate in Thika.

17. On 6<sup>th</sup> June 2012 Cpl. Mwangangi accompanied the relatives of the deceased to Thika Level 5 hospital mortuary where Dr. Jalang'o performed the post-mortem on the body of the deceased. She identified the accused in the dock as the person she had arrested and charged.

## **The Defence case**

18. After considering the prosecution evidence as outlined above, the court found overwhelming evidence to put the accused on his defence. He gave an unsworn statement. In his statement, he said that the deceased was his wife. He had given her fare to visit her home in Nyahururu on 17<sup>th</sup> May 2012. She left at about 10.00a.m. and when he called her at around 2p.m., she told him that she was almost there. He could not reach her on phone on 18<sup>th</sup> and 19<sup>th</sup> but he managed to get her on 20<sup>th</sup> at about 4p.m. He received a strange call about 8p.m. from a person who introduced himself as Esther's (deceased) husband. The same person called him again the following day and they argued about E's relationship with each of them; with the husband (PW7) asserting that he was her husband and the accused insisting that he was cohabiting with her.

19. The accused confirmed that E returned to Ruiru on 22<sup>nd</sup> and he picked her and gave her a ride home about 6p.m. He said he left for safari (a trip) to Kitale that night and returned on 24<sup>th</sup> at 1p.m. He did not find Esther at home. The following day Esther's brother called and asked him where Esther was. They decided to inform relatives and on 26<sup>th</sup> he made a report at Muigai Inn Administration Police Post that his wife was missing. When he went back on 27<sup>th</sup> to check on any report he was arrested and searched and his phones and sim cards were taken by the police. The police asked him to take them to his house and there they searched the house and took away a pair of gumboots, a panga, 3 framed photos, ID and Kshs.4,600/- cash. They escorted him to the Stage where he saw so many neighbours and workmates. He was then taken to Ruiru Police Station where he was interrogated. He learnt in the cell that there were human parts in the river.

20. The accused further told the court that he was locked in a cell and tortured and that is why he decided to lie to the D.C.I.O. about the death. He wrote his statement. On 29<sup>th</sup> the relatives of the deceased told him that they knew everything (about the murder?). On 4<sup>th</sup> June 2011 he was taken to Thika General Hospital and then to a magistrate's chambers where he gave information. He was brought to court on 11<sup>th</sup> to face the current charges. Finally the accused denied that he killed the deceased.

## **Submissions**

21. At the close of the defence case, the court heard submissions by the defence and the prosecution. **Mr. Anambo** the learned defence counsel submitted on that there was no eye witness to the killing of the deceased and that the prosecution relied on weak circumstantial evidence; that the accused repudiated the confession statement as it was not recorded in the Kiswahili language which language he used when making the statement; that it was not clear how the government analyst obtained the blood samples for analysis. With respect to various exhibits and particularly telephone handsets and sim cards, counsel submitted that there was no record to confirm the registered owners. Finally, counsel contended that there was no evidence of motive and malice aforethought and that the accused was intensely in love with the deceased and could not have murdered her.

22. On his part, **Mr. Okeyo** learned prosecution counsel submitted that the prosecution had proved the case beyond reasonable doubt. He submitted that malice aforethought had been demonstrated through the testimony of the prosecution witnesses and the confession of the accused. He opposed the submission by the defence purporting to reject the confession statement as no objection was raised prior to the confession being admitted in evidence by the court. Finally counsel submitted that the blood stains on the gumboots matched that of the deceased thereby creating an undeniable link.

## **Analysis of evidence**

23. This being a murder case, 3 critical elements must be proved by evidence. The prosecution must prove that the death of the deceased and the cause of such death; that the accused committed the unlawful act which caused the death of the deceased; and, that in committing such unlawful act, the accused had malice aforethought.

#### **Death of the deceased and the cause of such death**

24. The death of the deceased was not disputed by the defence. That notwithstanding and owing to the peculiar circumstances of this case it behoved the court to examine carefully the evidence proving death. The deceased was reported missing both by her brother (PW1) and her “husband” the deceased. A search was mounted and several days later 2 pieces of human flesh were found in the Theta river. Other parts namely head and palms were found in a disused pit latrine. C.I. Simon Kibori who was the Juja Police Station commander was present and oversaw the recovery. The head and palms were identified by PW1 and other family members as belonging to the deceased. The autopsy was conducted by Dr. Rose Jalang’o on the body parts. She found the head and facial structures still intact while the rest of the body parts were already decomposed. She concluded the cause of death as severe mutilation. She was not able to see the body injuries because of the decomposed state. Dr. Jalang’o produced the post-mortem report as Exhibit No. 7.

25. Further confirmation that the body parts belonged to the deceased was given by Paul Waweru Kangehe (PW15) the Government analyst. He testified that on 30<sup>th</sup> May 2012 they received several samples from the police in Ruiru for analysis. Of relevance at this point is the piece of human flesh said to belong to the deceased and the blood sample of the deceased’s mother. PW15 made a finding that the DNA profile generated from the piece of flesh was of a female origin with 99.9% chance that G W G was the mother of the donor of the piece of flesh. This confirmed that the body parts belonged to the deceased.

26. PW18 the investigating officer testified that after his arrest the accused led the police to his house at Ruriro within Ruiru. There they recovered a blood stained panga and a pair of gumboots. She also scrapped some dried blood from the wall. She submitted these items to the Government analyst. PW15 further testified that the DNA generated from the piece of flesh matched the DNA profile generated from the blood stains from the panga and the gumboots. These results show with certainty that the panga recovered from the accused’s house was indeed the murder weapon and supports the evidence of the pathologist that the cause of death was severe mutilation.

27. The blood splattered on the wall from which the DNA generated showed that it was the deceased’s blood further places the deceased in the accused’s room and confirms the room as the murder scene. From this evidence, I can safely conclude and indeed with certainty that the deceased met her unlawful death in the house of the accused.

#### Whether the accused caused the death of the deceased.

28. Evidence has established that the accused and the deceased were in a relationship and lived together in a house in Ruriro. This came out of the testimony of PW1 who is the deceased’s brother. He knew the accused and when he failed to get his sister on phone, he looked up the accused. They embarked on the search together. Further, the accused in his defence admitted to having been living with the deceased. He referred to her as his wife.

29. Having settled that the accused and the deceased were in a relationship and lived together, the next question is whether he indeed caused her death as charged. The prosecution has advanced the theory that the accused was last seen with the deceased. The deceased’s cousin A M W (PW2) testified that the deceased had put up at her (W’s) place on the night of 22<sup>nd</sup>. The following day, she escorted the deceased who said that she was going to pick her clothes from where she was living so as to come and live with her. W did not tell the court that she knew that the deceased was going to meet the accused. In fact she did not know the accused having only heard of a “boda boda guy who was interested in the deceased”

30. A ‘boda boda’ rider one David Chee Muiro (PW8) however confirmed that he had carried a lady customer on 23<sup>rd</sup> May 2012 along Kenyatta road in Juja at around 4p.m. The lady approached her and inquired whether he had seen G. He knew G and said he had not seen him. The lady requested to be taken from the upper stage where they went to the lower stage but to stop if they met G on the way. Around [particulars withheld] School, the lady passenger alerted him that she had seen G and when he stopped she paid him and went to G’s motor bike. The lady he had handed over to G later turned out to

be the deceased.

I find the evidence of PW2 and PW8 corroborative and credible with respect to tracing the movements of the deceased that evening.

31. Other than the prosecution evidence which I believed, the accused admitted in his unsworn defence that he received the deceased when she returned. He said that he met her and gave her a ride home. He confirmed that on his way to the stage, he met Muiru (PW8) carrying her and she alighted from Muiru's motor bike. He took her home and they arrived around 6p.m. He gave her money for supper and left her at home and returned to work until 8p.m. The accused however introduced an alibi by stating that upon returning home, they ate supper together and then he prepared and left for safari to Kitale around 10p.m. that night. He returned from the trip the following day and he got home around 1p.m. on 24<sup>th</sup>. He said that upon he did not find the deceased upon his return.

32. I have examined the accused's alibi against the prosecution evidence. PW8 handed over the deceased to the accused. The accused confirms that he was with her in the house until about 10p.m. when he left for Kitale. John Kungu (PW9) who was a close acquaintance of the accused and the chairman of the boda boda riders confirmed that their association went on a trip to Kitale on the night of 23<sup>rd</sup> May 2012. He told the court that the members had met at about 4p.m. and that during the meeting Amos (the accused) was not concentrating in the meeting. They left for Kitale that night arriving there on 24<sup>th</sup> at 1.00p.m. They travelled back around 3.00p.m. arriving back in Ruiru around 1.30a.m.

33. I have no reason to disbelieve the testimony of PW9 to the effect that the boda boda riders travelled to Kitale on the night of 23<sup>rd</sup>. Indeed the accused stated as much. The lingering question however is whether the trip creates an alibi for the accused.

34. The information filed states that the offence was committed on 23<sup>rd</sup> May 2012. There is sufficient corroborative testimony that the deceased was last seen alive on the afternoon and evening of 23<sup>rd</sup>. PW2 stated that she saw her off to go and pick her clothes. PW8 gave her a ride about 4p.m. and handed her over to the accused. The accused himself does not deny that he received her and were together in the house in the evening of 23<sup>rd</sup> before he left for his trip to Kitale. I find that the accused's alibi does not hold in the face of the overwhelming prosecution evidence. He may have executed the offence prior to the trip to Kitale or on arrival back. Again since there was no eye witness to the killing I must ask the question whether the accused was the only person in the house with the deceased and whether there are no other co-existing circumstances that would weaken the inference that the accused and no one else caused the death of the deceased. In **Republic Vs. Kipkering Arap Koske & another, 16 EACA at 135** the court stated in respect to circumstantial evidence thus:-

***(i) The circumstances from which an inference of guilty is sought to be drawn, must be cogently and firmly established;***

***(ii) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;***

***(iii) The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else."***

35. In the present case, any gaps in the witness testimonies (and I have found none) were sealed by the forensic evidence gathered by the investigators. The Government analyst's report [Prosecution Exhibit No.9] showed that the blood found spattered on the panga and on the accused's gumboots matched that of the deceased.

I am convinced that the presence of the deceased's blood in the accused's house, on the panga, and on his gum boots creates an undeniable link between the accused and the death of the deceased. He was the one

last seen with the deceased and when police went to search his house, he was the one who had the key and he opened it. There was no suggestion that anyone else could have entered the house in his absence and murdered the deceased. The accused did not disown any of the items recovered from his house and neither did he have an explanation in his defence respecting the presence of the deceased's blood in his house.

### **The confession**

36. Other than the overwhelming prosecution evidence which I have analyzed above, the accused made a confession before Hon. Mutuku then Principal Magistrate Thika Law courts. Section 25 of the Evidence Act defines a confession as 'words or conduct, or a combination of words and conduct from which, whether taken alone or in conjunction with other facts proved an inference may reasonably be drawn that the person making it has committed an offence' The Judges Rules on confessions made pursuant to Section 26A (2) of the Evidence Act provide extensive legal and procedural safeguards to protect an accused person. Key to note is that a court shall not admit a confession unless it is shown to have been given voluntarily to a Judge, a Magistrate or a police officer not below the rank of Chief Inspector of Police.

37. In the instant case, the investigating officer (PW18) testified that she was informed by the D.C.I.O. Chief Inspector Mureithi that the accused had expressed a desire to make a confession. He was then escorted to Thika law Courts where Hon. Mutuku took down his statement. Hon. Mutuku testified as PW13. She told the court that the accused was presented to her on 4<sup>th</sup> June 2012 at her chambers and that he had no complaints nor physical injuries. He elected the Kiswahili language and when he was informed of his right to have an advocate or 3<sup>rd</sup> party present, he elected to proceed without one. Hon. Mutuku then proceeded to record the statement after she had cautioned the accused.

38. The defence did not raise any objection to the admission of the confession statement. It was then admitted as Prosecution Exhibit No. 6. At the final submissions stage however, defence counsel submitted that the statement was given by the accused in Kiswahili but the same was written down by the Magistrate in English and therefore did not bear a translation certificate as required by the Judges rules. I was satisfied from Hon. Mutuku's testimony which was subjected to extensive cross-examination that she complied in all material aspects with the law in taking down the confession. I also carefully examined the statement and saw that the accused did append his signature to every page and on the certificate stating that he had voluntarily given the statement. On the issue of language Hon. Mutuku admitted in her testimony that the accused spoke in Kiswahili and she recorded in English. She stated that she understands both languages very well. I take judicial notice that the recording officer Hon. Mutuku being a judicial officer was competent to speak and write both English and Kiswahili which are both languages of the court. I do not therefore in this particular case find the omission to include a translation certificate fatal. I dismiss the suggestion by the defence made only at the close of the defence case that the statement did not conform to the rules as an afterthought.

39. In the confession statement admitted as Exhibit No.6 the accused narrated in great detail how he met Esther (the deceased and how they shortly moved in. He narrated how he had funded her trip home and how he later communicated with her husband, her return and how they quarreled when she wanted to pick her clothes. He stated that he slapped her and ***“suddenly she fell down...she did not respond and was not able to stand.....I noticed that she was dead”***

40. The accused further narrated how he left the body in the house and went on the trip to Kitale. On coming back he decided to dispose the body by cutting it into pieces which he threw into Riuriro river over the bridge. He made several trips to the river and when daylight broke before he disposed the head and palms, he put them in a polythene paper and hid them under the bed until night when he threw them into the disused pit latrine. He later reported her missing and mobilized a search. Further the accused narrated how he sent misleading messages to the police and E's brother implicating his own wife one J W and the deceased's "former" husband in her disappearance and death. Finally, he narrated how he was arrested and the items recovered from his house including panga, gum boots, mobile phones and sim cards.

41. The confession statement accords in every material aspect which the evidence tendered by the prosecution witnesses which I have already believed and found sufficient to found a conviction. The confession therefore only bolsters an already well investigated and well prosecuted case.

**Whether there was malice aforethought**

42. Malice aforethought is said to be proven when evidence satisfies any of the circumstances set out by section 206 of the Penal Code. Generally there are three main tests: the first is the intention to cause death; secondly, the intention to cause grievous bodily harm; and, thirdly if it is shown that the accused knew that there was a serious risk that death or grievous bodily harm could result from his conduct but he proceeds to do so without any lawful excuse. See **Nzuki V. Republic, [1993] KLR 171, Republic v Andrew Mueche Omwenga [2009] eKLR**.

43. In the present case, it is not in doubt that the accused assaulted the deceased. He however states in his confession that he only cut up the body for disposal. Whether he assaulted her to death with his hands or with the panga may never be known. He knew that the assault would cause grievous harm. I find from the evidence that he intended to cause such harm with the consequence that the deceased died.

44. In law, it is not necessary for the prosecution to prove motive. Motive however can strengthen the prosecution’s case. See generally **Republic V. Sharnpal Singh s/o Pritam Singh [1962] EA 13** at page 17. In the present case, it is clear that there was a motive behind the killing of the deceased. The accused and the deceased seemed to have fallen in love notwithstanding the fact that the latter was married to PW7. When the deceased reconciled with her husband and made the accused know that it was over between them he lured her back to his house only to kill her. The depth of the accused’s anger with the deceased for deciding to leave him for her husband comes out clearly in his confession statement. He was extremely angered when he learnt that the deceased were at her home in Nyahururu with her husband and that they had reconciled. He even had a nasty telephone conversation with him in which each of them was claiming to be her husband. In the accused’s own words, he told the deceased **“to come and release me when she got time”**. The **“release”** turned out to be a murder most cruel and foul. I am satisfied that the accused had malicious intention to end the life of the deceased.

45. In the premises, and for the reasons already given, I find A G M guilty of the murder of E W M. I convict him of the offence of murder contrary to Section 203 of the Penal Code.

46. Before signing off this judgment, I must observe that this is one case where the police took swift and thorough investigations. The prosecution counsel too prosecuted the case meticulously. I commend them.

**Judgment delivered, dated and signed at Nairobi this 30th day of November, 2015**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:-

- .....: Court clerk
- .....: Accused
- .....: For the Accused
- .....: For the State