



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MURDER CASE NO.12 OF 2011

REPUBLIC..... PROSECUTOR

VERSUS

PETER NJIRU NJERU ACCUSED

J U D G M E N T

PETER NJIRU NJERU hereinafter referred to as the accused stands charged with the offence of murder contrary to section 203 as read with section 204 of the Penal code.

The particulars as stated in the charge sheet were as follows;

PETER NJIRU NJERU: On 23/3/2011 at Gatunduri village, Ngerwe sub-location in Embu Municipality, within Embu County, murdered RUTH RUGURU KINYUA.

The case of the Prosecution is that the deceased and accused were husband and wife but had separated. They were seen together on the night of 23/3/2011. According to PW1 she had been with the deceased since 21/3/2011. They ended up at Meruri bar for a beer. She left the deceased at the bar and asked her to pass her home to pick her items. She never did. While at PW6's home she heard the deceased telling the accused loudly that they had separated and she did not know what he wanted. PW2 a bar maid at "Dunda bar" stated that on the same date PW1 and deceased had come to the said bar. She sold the deceased a bottle of beer. The two did not leave together. She confirmed that PW4 and others were in the said bar.

Silas Nyaga Njeru (PW3) was looking for PW4 to give him his torch when he learnt that the said PW4 was at Mirire bar. He went to the said bar and met PW4 and the deceased going home from Mirire bar. PW4 gave him the torch and they parted. As he stood there, the accused who is his paternal cousin appeared and greeted him. The accused had a panga and a torch and was drunk. The accused asked him if he had seen any people down that path. The witness did not tell him anything as he feared because of what he was carrying. The accused ran towards his home. PW3 went back to where he had come from. He again met the accused. This time the accused was with the deceased. He heard the deceased asking the accused what he wanted and they had separated. He held her by his left hand. The other one had the

torch. He did not check where the torch was. According to the witness the accused and the deceased were going home. Thereafter PW3 met the accused about three times when the latter seemed concerned that PW3 was telling people he had seen him with a panga and there were letters written by the police.

PW4 was at Mirire bar alone when PW1 and deceased arrived at about 8.30pm. He left them there but the deceased caught up with him on the road. The deceased told him they could go to their home and she spends there. As they walked he noticed that somebody was flashing at them from behind. On the way they met PW3 and they by passed each other, but saw PW3 standing with somebody at the bridge. The person caught up with them shouting **“stop there or I kill you”**. The person was the accused. He had a torch and a panga. He raised the panga and the deceased took off in the opposite direction pursued by the accused. PW4 then heard the deceased say **“Peter don’t cut me”**. She had fallen down. PW4 went home. In cross-examination he said the deceased was just a general friend.

PW5 and PW6 were at their home together with others. This was on 23/3/2011 at 9.30pm. They heard screams of **“Wuii Wuiii”**. PW5 heard the following words;

“Wuii Wuii I don’t know what you are asking me. I said I will not go back to your home”.

And this is what PW6 heard;

“Wuiii Wuii, I don’t know what you want from me. I will never return. We separated”.

PW5 identified the voice of the screamer as that of the deceased whom she had known for a long time. PW6 was only told about the screamer. She did not identify the voice herself.

PW7 (a brother of the deceased) was that night asleep in his house when he heard the deceased calling him **“Baba Karimi.”** He identified her voice. He responded by returning greetings **“Nikwega”**. Then the accused told him they would go to see him. The next day the accused came to his home and told him that the deceased had taken her remaining things and left.

PW8 a farmer and community policing member told the Court how the accused had come to her on 24/3/2011, 25/3/2011 and 26/3/2011 complaining about PW1 who he said was taking alcohol with his wife and tarnishing his name. She managed to reach PW1 on 26/3/2011. It was through the quarrelling of PW1 and the accused that she learnt of the deceased’s disappearance. After PW1 explained to PW8 what she knew the accused never came to her (PW8) again. On 25/3/2011 PW9 met the accused, who greeted him and he was able to identify him by his voice. Accused was carrying something in a sack which was emitting a foul smell. He told PW9 he had been sent by Simon to take a hide, to his butchery. PW9 believed him because of the foul smell. Later as he walked and before he reached the butchery where the accused had told him he was taking the hide, a motor vehicle appeared and with the lights on he was able to see the accused emerging from the gate of the Gospel Church near the slaughter house. He was carrying an empty sack. They bypassed each other. Later that night he got information that the accused was being looked for in relation to the disappearance of the deceased. On 27/3/2011 morning there was a foul smell from the toilet at the Gospel Church. There were also too many flies there. Body parts and clothes were removed from this toilet. The body parts were said to be those of the deceased and the clothes for the deceased and a jacket for the accused. PW17 a brother to the accused had assisted in having him arrested on 30/3/2011.

Dr. Maingi (PW14) the Pathologist found the cause of death to be **“severe head injuries”** as a result of assault. A sharp object(s) was/were probable weapon(s). Dismembering body parts possibly followed death. The Government analyst (PW15) examined a number of blood stained exhibits taken to him. The main highlights of his report are that;

1. **The dirty greyish jacket of the accused (EXB1) was slightly blood stained.**
2. **The long sleeved shirt of the accused was lightly stained with human blood.**
3. **DNA profiles from blood stains on the jacket (EXB1) were unsuccessful.**
4. **DNA profile from the tissue sample of the deceased was also unsuccessful.**

5. The blood stains on the grey long sleeved shirt of the accused generated a DNA profile of an unknown female origin.

PW18 and PW19 who are police officers received a report of a missing daughter from PW10 and his wife on 27/3/2011. They embarked on investigations and were later informed of a foul smell from a toilet at a bar in Gatunduri. Arrangements were made for the demolition of the toilet from which Human body parts and clothes were recovered. The Accused was examined for mental fitness by Dr. Thuo (PW20). He was found to be mentally fit to stand trial.

The accused in his unsworn statement of defence denied the charges. He stated that on 23/3/2011 he went to work and returned home after 5pm. He then went to a nearby bar where he found 10 male patrons with only one barmaid. When he was through he went home and slept. On 24th he reported on duty and returned home in the evening. He went to the shops with his son Vincent and he remained there and went to the bar. He went back home after a few drinks. On 26th he was informed by his foreman of a trip to Ruiru. He informed his parents. He left for Ruiru together with other workers. In the evening he learnt of the deceased's death and her body having been thrown in a pit latrine. They had separated six (6) months prior to this incident. On 29th his brother PW7, came to Ruiru and on 30th he took him straight to Manyatta police station. He denied the charges. He stated the deceased was married to PW4 and that the witnesses lied to Court though three of them said he was not with the deceased.

Mr. Okwaro relied on his submissions at the close of the Prosecution where he had argued that malice aforethought had not been proved. Secondly there was no recognition of the remains of the deceased. And that there was a discount in the chain of events. Further he submitted that remains of a human being could not be carried by one hand as stated by PW9. The circumstantial evidence was not strong he submitted.

In response M/s Macharia for the State submitted that the accused person was the last person to be seen with the deceased person. The remains had been identified by PW10 and a minor PW13 had identified the clothes retrieved from the latrine. She submitted that the evidence pointed to the accused as the murderer.

This is now the case before Court for determination. The deceased was last seen alive on 23/3/2011. The parents reported the matter to the police on 27/3/2011 when a thorough search was conducted leading to the demolition of a toilet. Indeed from the toilet were retrieved human body parts plus clothes. The body parts according to pathologist (PW14) were dismembered and decomposing. Identifying them was abit difficult. He however stated that only the facial parts were identifiable. The head was in pieces. PW10 who is the deceased's father identified the deceased by the bangle on the hand. This hand with a bangle is identifiable from the photos EXB5 (photos 7 and 8). PW5 a son of the deceased and the accused identified the clothes jacket (EXB1) and the purple skirt and as belonging to the accused and deceased respectively. These clothes that were identified were retrieved from the toilet together with the body parts. The jacket (EXB1) was found to have blood stains. I am satisfied that the fact of death has been confirmed and the body parts and clothes belonged to the deceased. The evidence of (PW14) is that the deceased was first killed before her body was dismembered. Her head was in pieces. This can't be said to have been a natural death.

It is clear from the evidence on record that there is no eye witness to the murder of the deceased. What is before this Court is pure circumstantial evidence. Circumstantial evidence is evidence that is not direct. The Court of Appeal had this to say in the case of *NZIVO –V- REPUBLIC [2005]1 KLR 699*.

In a case dependent on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference.

The same observation was repeated in the case of **WAMBUA & 3 OTHERS –V- REPUBLIC [2008] KLR 142** where the Court of Appeal held thus;

1. ***In order to justify an inference of guilt from circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The burden of proving facts which justify the drawing of the inference is always on the prosecution which is required to establish its case beyond reasonable doubt.***
2. ***It is also necessary, before drawing the inference of the accused's guilt from circumstantial evidence, to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.***

I would now wish to revisit and reevaluate the evidence on record to see if it falls within the parameters required for circumstantial evidence to form the basis of a conviction. The witnesses in particular PW1, PW2, PW3 and PW4 have all relived their last moments with the deceased. PW3 and PW4 in particular saw the accused with the deceased. PW3 at one point met them that night with the accused holding the deceased by the waist. The accused had on the same night confronted the deceased while armed with a panga, and a torch. The deceased took off running with the accused in pursuit. She was heard to say ***“Peter don't cut me”***. She stated this having fallen down. It is also evident that the deceased was drunk and making noise. PW5 and PW6 while at home that night heard noises on the road. PW5 ran there but found the people making noise had passed. He clearly heard a voice he said was of the deceased saying;

“Wuii Wuii I don't know what you are asking me. I said I will not go back to your home”.

PW5 had known the deceased for a long time. PW6 heard similar words but she was not able to identify the voice. PW1 a close friend of the deceased was in the same home with PW5 and PW6. She heard the voice of the deceased telling the accused (her cousin) loudly that they had separated and she did not know what he wanted. They did not ask anything as the accused was her husband. She also heard the deceased call her neighbor saying ***“Baba Karimi come”***. The said Baba Karimi testified as PW7. He is a brother to the deceased. He stated that he was asleep when he was called by the deceased saying ***“Baba Karimi”***. He responded with greetings. It was then that the accused told him they would go to see him. PW7 knew the voice of his sister well. She is the deceased. And the accused was the husband. An account of the events of 23/3/2011 night have been covered very well by these witnesses. In his unsworn defence the accused stated that on 23/3/2011 he left for work in Embu town at 6am. He worked upto 5pm and went home. He then went to a nearby bar where he found ten (10) patrons. There was only one lady ***“the barmaid”***. He then went home and slept.

PW2 a barmaid in her evidence said the accused was at the bar in Dunda where she worked. The deceased also came there. And when the deceased came the accused immediately left. PW3 and PW4 actually interacted with the accused and deceased on this night. PW1 and PW5 heard the deceased's voice shouting about a person she had separated with. They knew the deceased's voice well. The accused is the only person the deceased had separated with. PW7 spoke to the accused and deceased that night as they passed by his house. He too knew their voices. The evidence is so consistent. The accused said he was at a bar. The evidence confirms he was at the Merire bar of Dunda that night and he is the last person who was seen with the deceased alive. The conduct of the accused from the 24th March 2011 is very important in this case.

PW7 stated that on 24/3/2011 at 10am the accused came to his home and informed him that his sister (deceased) had taken all her remaining things and gone. On the same 24th March 2011 evening the accused was at the home of PW8, a community policing member. He wanted PW8 to warn PW1 against tarnishing his name. On 25th he came again to find out if she had delivered the message. The answer was that she had not. And on 26/3/2011 morning the accused was at PW8's home, over the same issue. PW8 then acted. She got PW1 and warned her in the presence of the accused. There was a quarrel between PW1 and accused and that's how PW8 learnt of the deceased's disappearance. The accused was not seen again. This conduct of the accused is quite telling. He said he left for Ruiru for duty on 27/3/2011. His conduct between the dates of 24th – 26th March 2011 is that of a worried person. What was disturbing

him? His statement to his brother inlaw PW7 on 24/3/2011 morning was that the deceased had taken all her remaining things and gone! This is the man who had heard them that night and he had promised them that they would come to see him. And here he was alone to see him. He had some explaining to give. So he lied that the deceased had taken all her remaining clothes and gone! On 25th March 2011 at 7.30pm PW9 was on his way from collecting milk when he met the accused who was carrying something in a sack. The same was emitting a foul smell. He believed him when he said he was taking a hide to Simon's butchery because of the bad smell. A few minutes later with the help of lights from a motor vehicle he saw the accused emerging from the gate of the Gospel Church. He was carrying an empty sack. That night he was called by PW8 and told how they were looking for the accused. He told them he had seen the accused carrying a sack. Mr. Okwaro submitted that a human being could not have been carried by one hand which is true. PW9 testified on what he had seen. The possibility of several trips having been made to that toilet cannot be ruled out.

On 27th March 2011 morning the foul smell from a toilet near the Gospel Church was detected. The church was 40 metres from the toilet. A report was made and police officers together with members of public demolished the toilet. Retrieved from therein were human body parts and clothes. (Photographs EXB5). The deceased's father (PW10) identified the bangle on one hand. PW7 identified the legs and hands. The accused's nine year old son (PW12) identified the mother's clothes and the father's jacket (EXB1) after retrieval from the toilet. This jacket (EXB1) had blood stains on it. The Government analyst found the blood to have been from an unknown female. Unknown because the tissue from the body parts was decomposed and could not generate a DNA profile.

PW9 testified that he met the accused on 25/3/2011 at 7.30pm. This date is an error because he said the next day the toilet was demolished. The toilet was demolished on 27th March 2011. It's also on record that PW8 called him on the same night he had met the accused. This is also the same day PW8 had met called PW1 to warn her of the allegations by the accused. The warning was made in the accused's presence. And this day was 26th March 2011 not 25th March 2011. On this 26th March 2011 PW1 and accused in PW8's presence had quarreled and that's how PW8 learnt of the deceased's disappearance. The matter had now become public and the accused could no longer hide. Accused stated that he went on duty in Ruiru on 27th March 2011 with the knowledge of his parents. As he was busy there his brother (PW17) came and had him arrested. PW17 testified that he learnt of the deceased's death on 27/3/2011. The deceased was his sister in law and wife of the accused. He also got information that the accused had disappeared from home. He embarked on looking for him and traced him in Kimende on 30/3/2011. He handed him over to the police officers he was with. It's therefore not true when the accused says he was arrested in Ruiru. Ruiru and Kimende are two different places. He had not gone anywhere to work but he had actually run away from home.

There is no dispute that the accused and deceased were married and had two children. It's also true that they had separated six (6) months prior to this incident. According to PW1 the deceased had got a job in a bar at Kiriari of Manyatta area. In his defence the accused stated that the deceased was married to PW4. On the night of 23/3/2011 the accused is said to have been furious and armed with a panga even as he confronted PW4 and the deceased. Both PW3 and PW4 saw this panga. And PW4 saw the accused hold the deceased and tell her that he would show her.

It is therefore clear that having been jilted by the deceased the accused suspected that PW4 had taken her away from him. He confirms this by his own in defence that PW4 had married the deceased. In the case of **SAWE –V- REPUBLIC [2003] KLR 364** the Court of Appeal held this;

“Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on”.

In this case I find the circumstances outlined above to irresistibly point to none other than the Accused as the person who committed this murder. There is no weakening of these circumstances. The accused was motivated by jealousy, spite and ill will. This can be deduced from the way the body parts of the deceased were dismembered and the head smashed beyond recognition.

I find the Prosecution to have proved its case beyond reasonable doubt. For my part I find the accused guilty of murder as charged, and I convict him under section 322(2) of the Criminal Procedure Code.

DATED, SIGNED DELIVERED IN OPEN COURT AT EMBU THIS 18TH DAY OF JULY 2013.

H.I. ONG'UDI

J U D G E

In the presence of;

M/s Ing'ahizu for State

Mr. Okwaro for accused

Accused – present

Njue – C/c

M/s Ing'ahizu

1st offender no records.

Accused in mitigation

Accused is a 1st offender. He is the only surviving parent of some two children. He regrets the incident. May the Court give him a reformative rather than punitive. Sentence may sentence. May he be given a sentence that will enable him take care of the two children.

Court

I have considered the mitigation by Counsel on behalf of the accused. I also consider that the couple had 2 young children. The accused has been in prison for about two years. What he did was barbaric. He will serve 30 years imprisonment.

Right of Appeal explained.

H.I. ONG'UDI

J U D G E