



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAKURU
CRIMINAL CASE 45 OF 2007

REPUBLIC.....PROSECUTOR

VERSUS

PETER KARANJA NGUGI.....1ST ACCUSED

FREDRICK NJUGUNA NGUGI.....2ND ACCUSED

JUDGMENT

The deceased persons, William Wamboe and his wife, Milka Mumbi Wamboe were killed in grisly circumstances on 21st August, 2005 in their house in Mutundu Village Ndungori, Nakuru.

According to the doctor, **P.W.5, Dr. Paul Gachunga**, the deceased persons suffered severe head injuries and died of cardiopulmonary collapse. No one witnessed the murder but evidence was presented that the two live with their son Julius Ndirangu; that they also had workers, Wanyororo, Maina and Peter; that Peter was a son of a certain lady who was a concubine of William Wamboe – the deceased in the first count.

After the burial of the deceased persons, the 1st accused, Peter Karanja Ngugi, went to the home of the deceased persons and informed the family members that he knew those who were responsible for the death of the deceased persons. After making that revelation, the 1st accused person vanished. When he was eventually found, he gave the name of Charles Maina, as one of those who killed the deceased persons.

Charles Maina was arrested. At this stage, the 1st accused changed his story and maintained that he did not know who killed the deceased persons. He was then charged with the offence of giving false information. While his trial was still pending, he jumped bail and a warrant for his arrest was issued. He was traced in the company of his brother, the 2nd accused person and the two of them were arrested on 31st March, 2007.

On 3rd April, 2007, one of the deceased persons' daughter, **P.W.2, Isabelle Wangechi (Wangechi)** went to the police station in the company of her uncle, **P.W.3, Wilson Wamboe**, to seek the assistance of the police to search the houses of the accused persons. At the house of the 1st accused person, a T-shirt and a half Barclays Bank card bearing the name of the deceased were recovered while another T-shirt was

recovered in the house of the 2nd accused person. The two T-shirts were said to belong to the deceased, William Wamboe.

The accused persons were consequently charged with two counts of the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Being called upon to make their defence, the accused persons elected to give sworn statements.

The 1st accused recalled how on the date of the alleged murder he was at his home and only learnt of the murder the next morning. He mourned with the family of the deceased persons and in fact he was among those who helped prepare the graves. Three weeks after the burial, he met a family member of the deceased persons who thanked him for his role during the burial and asked him to be on the look-out of those who may have murdered the deceased persons.

Similarly, Wangechi gave the 1st accused person Kshs.400/= to help in tracing the suspects, a request he promised to endeavour to undertake. He added that he only promised to look for the killers because he was drunk. Later, Wangechi approached him with the police and he was arrested and charged with giving false information in criminal case No.2642 of 2005. He was granted bond but absconded. He was subsequently arrested with his brother, the 2nd accused person.

While in police custody, the two were taken to their respective houses where a search was conducted. It was the evidence of the 1st accused that the search was exclusively done by Wangechi while the police simply stood by, watching. It was Wangechi who “*recovered*” the half card. According to him, the card was taken to his house by Wangechi. Regarding the T-shirt, he maintained that it belonged to him.

The 2nd accused person similarly denied any involvement in the murder of the deceased. When he was arrested, Wangechi assured him that he would be treated as a witness if he informed the police that the 1st accused knew the killers. Instead he was arrested and together with the 1st accused taken to their houses for a search. Only a T-shirt was collected from his house. He maintained that the T-shirt recovered from his house was his.

That in summary constitutes the evidence presented by the prosecution side and the defence.

This matter was initially heard by Hon. Kimaru, J who received evidence from P.W.1 to P.W.6 and upon his transfer from this station, Mugo, J took over and recorded evidence from P.W.7 to P.W. 15. On account of failure to involve the assessors in the trial, the matter was ordered to start *de novo*. At the same time Mugo, J was transferred and therefore it fell upon me to commence a fresh hearing.

I reiterate that there was no direct evidence of the person or persons who inflicted the fatal injuries on the deceased persons. The prosecution case is based solely on circumstantial evidence. That evidence is to the effect that the 1st accused person volunteered and supplied the names of those he believed committed the murder, but upon investigations the information was found to be false.

Secondly, while his trial for the offence of giving false information was pending, he jumped bail. The third piece of evidence against both accused persons is that two T-shirts and a Barclays bank plate identified to belong to the deceased person were recovered from the accused persons’ houses.

It is firmly established that conviction can be based on circumstantial evidence if such evidence points irresistibly and exclusively to the guilt of the suspect and only if there are no co-existing factors that would weaken or destroy the inference of the suspect’s guilt. See **Republic V. Kipkering Arap Koske & Another** (1949) 1 EACA 135 and **Simeon Musoke V. Republic** (1958) EA 715.

There is overwhelming evidence that the 1st accused person told members of the deceased persons’ family that he had heard former and current employees of the deceased boasting at a drinking den that they had killed the deceased persons. He named Maina, Peter and Wanyororo and unidentified 4th person.

Of the four, only Wanyororo was still an employee of the deceased persons, the rest having been dismissed before the date of the incident.

It is also on record that Wangechi paid the 1st accused for this information. The matter was reported to the police, who upon investigation found the information to be false and charged the 1st accused with **giving false information to a person employed in the public service** contrary to **Section 129** of the **Penal Code** in Nakuru C.M.CR.C.No.,2642/2005. He jumped bail and was subsequently arrested with his brother, the 2nd accused person. It is not clear why the 2nd accused was arrested in the first place. Perhaps, as the 2nd accused himself suggested, he was arrested because he had declined to implicate the 1st accused by confirming that he (1st accused) had indeed promised to name the killers. Again I fail to understand why the 1st accused was arrested and charged yet he gave three names of those he had heard boasting and who were subsequently arrested but later released by the police without any explanation.

But it appears to me that the only reason why Wangechi caused the 1st accused to be arrested was the latter's failure to give information that would lead to the arrest of the real killers. For instance, in her evidence Wangechi stated before Kimaru, J and repeated the same words before me that she:

“.....suspected the 1st accused when he told us he knew the killers and then disappeared.”

Before Kimaru, J, she had also said:

“I suspected Peter Itotere, Maina and Wanyororo were involved in the death of my parents.”

Wangechi's sister, Mary Wanjiru Wamboe, on her part said before Mugo, J that:

“The only person I suspected was a person called Mama Peter. I did not know the accused persons..... Mama Peter was my father's girl friend.”

One time my father asked me to go and collect his things from her. I went and she gave me some table clothes. That was a few days before the death of my parents – a week to be precise. Three people were arrested..... Wanyororo, Maina and 1st accused. Peter fled.”

John Wahome Ndirangu, the brother of the deceased in the 1st count, told Mugo, J as follows:

“I believe that the son of the deceased, Julius Ndirangu knew something about his father's death. That he had some idea concerning the death.”

Later, Wangechi was to state as follows before me:

“I suspect my brother, Julius Ndirangu and Mama Peter. They are not before the court..... I suspected my brother, Julius Ndirangu..... Mama Peter is available. She was not arrested. There was a bit of difference between her and my father. Julius Ndirangu had bad relationship with my parents. He drank and would threaten to beat them. Whenever he gets drunk he goes to the grace and “tells” the deceased that if they listened to him they would not be in the graves – that he has taught them a lesson.”

It is clear from the foregoing that the only reason why the 1st accused was arrested was in connection with giving false information. There is evidence on record that the deceased persons had employed several workers, Wanyororo, Maina, Peter and a certain lady who would come once or twice a week for general cleaning.

Some of them were arrested but released under unexplained circumstances. None of them testified before Kimaru, J, Mugo, J or even myself. Mama Peter, the concubine of the deceased in count 1 and the deceased person's son, Julius Ndirangu were suspected to have been involved in the murder of the

deceased persons. They too were not called either before me or before Kimaru, J though Julius Ndirangu testified before Mugo, J after pressure was applied on the prosecution to call him,

His evidence was disjointed and difficult to understand. At one point he would be categorical that he could not threaten his parents but shortly he would recall how he would be celebrating their death. For instance, he said:

“I say certain words when I am sober. I say the following:

“That is mum there, I am sorry”

When I am drunk, I say:

‘You used to boast of yourselves..... Now where are you? Those are not my wishes but God’s.

I refer to them boasting when I remember the quarrels we had with them.”

Apart from the workers, former workers, Mama Peter and Julius Ndirangu, there were also tenants of the deceased persons who were suspected to have been involved in the murder because they had rent arrears.

I cannot, from the foregoing, find anything linking the two accused persons with the murder of the deceased persons. There were just too many suspects and the 1st accused person cannot be guilty merely because he gave names of suspects who the police failed to charge.

I turn to consider the search that was conducted at the residence of the accused persons. I start with the evidence of the arresting officer, P.C. Fredrick Wambua to the effect that the houses of the accused persons were not searched upon their arrest. There is also evidence taken before myself and before Mugo, J that it was Wangechi who demanded that a search be conducted in the houses of the accused persons. This demand was made several days after the arresting of the accused persons. There was no reason why she made that demand at this point in time

The manner the search was conducted went against the established practice . The police stood by and watched while civilians (Wangechi, her son and uncle) conducted the search. Even the former Constitution (at **Section 76**) guaranteed an individual protection against arbitrary search or entry.

Sections 118 of the **Criminal Procedure Code**, **180** of the **Evidence Act** and **19** of the **Police Act** provide for the procedure preceding a search.

For instance, **Section 118** aforesaid stipulates that:

“118. Where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is or is reasonably suspected to be in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.”

In the first place, the search was flawed as it was conducted by unauthorized persons, who were on a fishing expedition. The manner the T-shirts and the bank plate were discovered was incredible.

For all the reasons stated, the circumstantial evidence does not irresistibly point to the accused persons. There were also too many suspects in this matter, some of whom are still at large today.

In the result, I find no evidence implicating the accused persons on the death of the deceased persons and

accordingly acquit them.

Dated, Signed and Delivered at Nakuru this 11th day of May, 2012.

**W. OUKO
JUDGE**