



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**Criminal Case 91 of 2008**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARY NJOKI MAINA.....ACCUSED**

**JUDGMENT**

By the information filed in court on 5/9/08, Mary Njoki Maina was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The allegation against her is that on 23/8/08 at Karunga Centre, Gilgil, in Naivasha District, Rift Valley Province, jointly with others not before the court, murdered Joseph Thiga Gichuhi. She denied the offence. The prosecution called a total of 8 witnesses in support of the charge, whereas the accused made a sworn statement in her defence. She did not call any witnesses.

Jackson Mwangi Wangondu (PW1) a resident of Karunga, recalled that on 23/8/08, at about 9.00 p.m., he was taking alcohol at a club called Corner bar where Njoki (accused) used to sell alcohol. He entered the club at about 7.00 p.m. There were about ten other people in the club. The source of light was a pressure lamp placed at the counter and he was able to see every body in the club because the club is not big. He said that Thiga (deceased) was also at the club but sat on a different table with other people whom PW1 did not know. PW1 had sat on the same table with Njoroge as he drunk Kenyan brandy. PW1 said that the accused was selling at the counter together with Ciru. PW1 saw Thiga leaving the bar and upon reaching the door, the accused told him to go back because he had not paid his bill. The accused got hold of Thiga (deceased) and asked him to go and pay. Ciru and Kariuki went to assist the accused pull the deceased. They pulled the deceased and when they let go, the deceased fell down and hit the floor. Ciru and Kariuki left him where he had fallen and accused removed the deceased's shoes, told deceased to collect them when coming to pay his bill. Accused then pulled the deceased outside to the veranda. PW1 helped Wilson Njoroge, a cousin to the deceased to carry the deceased, his aunt's house which was about 300 meters from the club. PW1 said that by then, the deceased was bleeding from the nose and had breathing problems. On the next day, PW1 and Njoroge took deceased to St. Mary's Hospital, Gilgil. PW1 later learnt that the deceased had died. He identified the shoes that the accused removed from the deceased on the said night (PEXh.1). PW1 denied that anybody ever beat the deceased but that it is because of the force the accused and the two others used to pull him and let him go that resulted in his being seriously injured.

PW2, John Njogu Maina, also went to Corner bar at Karunga on 23/8/08 at about 7.30 p.m. As he was drinking alcohol, an argument broke out between accused, Njoki and Thiga (deceased). The accused alleged that the deceased owed her money which he denied. The accused, Kariuki and a lady he had not known her name (must be Ciru) started to pull the deceased outside, the deceased fell near the door on the doorframe and became unconscious. PW2 also said that the deceased fell on his back and Njoki pulled him to the veranda outside. PW2 said that there was light from a pressure lamp in the bar and he was able

to see everybody because the bar is not big. He denied that anybody ever beat the deceased and he denied seeing any injuries on the deceased. He identified the shoes that the accused removed from the deceased (PEXh.1).

PW3, Mercy Nyambura Wairimu was the wife of the deceased. She recalled that on 24/8/08, one Mama Njoroge called her at about 7.00 a.m. and asked her to arrange to collect her husband to take him to hospital because he had been beaten. She went to Karunga, found the deceased unconscious and he had a swelling on the forehead. She went to get the deceased's shoes from the accused but she refused to give them for reasons that the deceased had not paid for a glass that he broke. PW3 took the deceased to hospital at St. Mary's Gilgil Hospital where he died. She identified the deceased's shoes in court (PEX.1).

Before post mortem was conducted by Dr. Daniel Kibet Langat (PW7) the body was identified by Benard Wanyoike Gichuhi, the deceased's brother and David Kaboko Chege, (PW4 and 6 respectively).

The Investigating Officer was Inspector Joseph Indeke (PW5), then of Gilgil Police Station. He received a report of an assault on 24/8/08. The report was that there had been a fight between the deceased and accused. PW5 went to Corner bar and arrested the accused for assault. On 25/8/08, he received a report that the deceased had died. He went back to Corner bar to record statements from witnesses and recovered a pair of shoes which were alleged to have been taken from deceased by accused (PEXh1). He preferred the charge against the accused.

PW7, Dr. Kibet performed post mortem on the deceased's body on 28/8/08 and found that he had sustained a swollen scalp on the left parietal occipital region (at back of the head) a bruise measuring 1x0.5 cm on left frontal region of the head, blood was oozing from both nostrils, multiple bruises on the left elbow (back) and bruise on left iliac fossa (function of body and lower limbs). Internally PW7 found that the deceased had a fracture of the left parietal region of the scalp, extra dural haematoma, accumulation of blood on the parietal region, extra-dural haematoma of parietal region. He formed the opinion that the cause of death was cardio pulmonary arrest arising from severe head injury that led to intracranial haemorrhage and the cause of injury was a blunt object.

PW8, Dr. Joseph Waigi examined the accused and found her to be mentally sound and therefore fit to plead to the charge.

In her defence, the accused testified that she was at work at Corner bar at Karunga on 23/8/08. The deceased went to the bar at about 7.30 p.m. while drunk. She knew him as a friend to her colleague, Anne Wanjiru. He went to sit near the counter with his friend Anne Wanjiru (Ciru) and that the deceased told Anne to keep his shoes and she gave him slippers; That Anne had two friends in the bar, the deceased and Kariuki and that Kariuki also came in to the bar and gave Anne his jacket to keep for him. The deceased stood up and called Anne aside. It is then that Kariuki stood up, got hold of the deceased, pushed him, he lost his balance and fell on his back. It is PW1 and Njoroge who took the deceased home. The accused denied ever touching the deceased; that Anne told her to keep the shoes for her. The accused also denied that the deceased owed the bar any money.

The evidence of PW1 and 2 is consistent as to what occurred at Corner bar on 23/8/08 before the deceased was injured. Contrary to what the accused said in her defence, both PW1 and PW2 said that it is the accused who first demanded that the deceased pay his bill, she got hold of the deceased and Ciru and Kariuki only went to assist the accused pull the deceased. The accused's version of the events` that there was a fight or scuffle between Kariuki and the deceased is an afterthought and I dismiss it as untrue. Nowhere during the testimony of PW1 and PW2 was that allegation put to them. There was some slight variation in PW1 and PW2's evidence as to whether the accused was pulling the deceased back into the bar according to PW1 or did she pull him towards the outside of the bar. That discrepancy is immaterial. What is not in dispute is that the deceased was pulled by the accused and two others who are at large and when they let go, the deceased fell near or at the door of the bar, as a result of which he got seriously injured.

The accused said that the deceased's shoes had been left with her by Anne Wanjiru. However, there is

overwhelming evidence from PW1, PW2 and PW3 that the accused took the shoes as lien pending payment of a debt allegedly owed by the deceased. When the deceased's wife (PW3) went to get the shoes from the accused before the deceased died, the accused declined to release the shoes until the alleged debt was paid. I do believe and find that the accused had kept the deceased's shoes to await the payment of what he allegedly owed the bar and the shoes were recovered from the accused by PW6. That evidence does corroborate PW1 and PW2's evidence as to the source of the dispute between accused and deceased.

According to PW1 and PW2, the deceased was not beaten by anybody but upon falling after accused and two others pulled him and let go, they saw him fall and start bleeding from the nose and was not able to breathe well. PW3, deceased's wife who saw him the next day found a small swelling on the deceased's forehead. PW7, the Doctor who performed the post mortem confirmed that there was a swollen forehead, blood was oozing from both ears and nostrils, deceased had swollen scalp at left parietal occipital, a bruise on left iliac fossa (junction of the body and lower lumber. Internally PW7 found that the deceased suffered a fracture of the left parietal region of the scalp and there was accumulation of blood on the said region; he formed the opinion that the cause of injury was cardio pulmonary arrest due to severe head injury. Both PW1 and PW2 and even the accused claim to have seen the deceased fall on his back. The injury on the forehead was not explained. The doctor, however, said that the injuries are consistent with a blunt object which can include a fall. The doctor's findings are consistent with PW1 and PW2's evidence especially as relates to the injuries found at the back of the head.

The deceased died two days after the incident at the bar and I have no doubt in my mind that the death was as a result of the injuries he sustained after he was pulled and made to fall by the accused and others. The only question I need to ask is whether the accused had malice aforethought or the intention to cause grievous harm or the death of the deceased. I find no evidence on record to demonstrate that the accused or those with her had intended to grievously harm or kill the deceased. The injuries and resultant death were a result of the accused's intention to prevent the deceased from leaving the bar without paying an alleged bill. I am satisfied that the evidence on record discloses an offence of manslaughter. I will find the accused guilty of the lesser offence of manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code** and convict her accordingly.

**DATED and DELIVERED this 28<sup>th</sup> day of September, 2012.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Ms Wanjiku holding brief for Mrs Ndeda for the accused  
Mr. Omwega for the State  
Kennedy – Court Clerk