



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Criminal Case 18 of 2008**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**CHARLES NGIGE NJERI .....ACCUSED**

**J U D G M E N T**

**CHARLES NGIGE NJERI**, the accused person herein, was charged with the offence of **Murder contrary to section 203 as read with Section 204 of the Penal code**. The particulars of the offence were that on 30<sup>th</sup> January 2008, at Makwa Village, Chania Location in Thika District, the accused murdered **JOSEPHINE WAMBUI WANYORO**.

13 witnesses testified on behalf of the prosecution.

**PW 1, P.N**, was 15 years old by the date when she testified in court, on 26<sup>th</sup> January 2009. She used to live with the deceased at a house in Thika.

On the material day, the deceased left **PW 1** at home, when she went to visit her husband's home, nearby. The deceased returned to her home at about 7.00p.m. Whilst **PW 1** continued cooking supper, the deceased went outside the house, to wash a thermos flask.

There was a tap connected to a water tank which was outside the house. It is at that tap that the deceased went to wash the flask.

Whilst the deceased was still at the water tank, **PW 1** saw 2 men within the compound. One man walked straight towards the direction where the deceased was, whilst the second man first paused briefly at the door to the kitchen.

At that moment **PW 1** looked directly at that man, and the man also looked at her directly. Thereafter, that man also went towards the direction where the deceased was.

**PW 1** heard the deceased calling her, whilst inquiring about the identity of the 2 men. That development heightened the curiosity of **PW 1**, resulting in her taking steps to see what the men were up to. Therefore, **PW 1** approached stealthily, until she reached a spot from where she was able to clearly see the 2 men.

It was the evidence of **PW 1** that the said man first shot the deceased on her legs, causing her to fall down, crying. Next, they shot her in the chest.

The men appeared to look for something from the ground where the deceased fell. Thereafter, the two men left.

**PW 1** used the phone of the deceased to call her brother-in-law.

**PW 1** also testified that there was a light at the place where the tap was located. The light enabled **PW 1** to identify the 2 men who assaulted the deceased. Indeed, **PW 1** testified that it is the accused herein who shot the deceased. She was so sure about the said identification that **PW 1** later picked out the accused at an Identification Parade.

**PW 2, DR. ANDREW KANYI GACII**, was a Consultant Pathologist and Forensic Specialist at the Kenyatta National Hospital. He performed the post mortem examination on the body of the deceased.

**PW 2** noted that the body had a gun-shot wound on the right side of the chest. The bullet had penetrated into the chest cavity, causing a tear in the middle lobe of the right lung. It also caused another tear in the diaphragm, before going down and causing another tear within the liver tissue.

A second gun shot injury was on the left thigh.

An examination of the brain and other parts of the body revealed that the deceased had not been ill before she was shot. In effect, her death was not due to natural causes.

The doctor concluded that the cause of death was severe bleeding due to gun-shot wounds, one to the chest, and the other to the thigh.

**PW 3, INSPECTOR SILA IKIARA**, conducted the Identification Parades at which **PW 1** identified the accused person.

The accused declined to sign the parade forms, saying that if he did so, he would be confessing that he had committed the offence.

**PW 4, FELISTA NJERI KAMAU**, is the wife to a brother of the deceased's husband.

On the material day, **PW 4** escorted the deceased when she was going back to her house after visiting their mother-in-law.

When they were on the way, the two ladies encountered 2 men who were moving very fast. The ladies allowed the men to pass.

Later that night, **PW 4** learnt that the deceased had been shot. She joined her husband in rushing over to the deceased's house, where they spent that night.

During cross-examination, **PW 4** said that their mother-in-law was suffering from diabetes. Therefore, when the deceased paid her a visit on the material night, the said visit was a regular one.

The witness also said that she did not identify the two men who they encountered that night.

**PW 5, JOSEPH MURURI WANYORO**, is a brother to the deceased.

**PW 5** visited the deceased at the hospital immediately after he learnt that she had been rushed there, following a shooting incident.

The deceased narrated to **PW 5** that she was shot by 2 men, when she was washing utensils near her water tank.

When **PW 5** inquired from her why someone would have wanted to shoot her, the deceased said that she knew that the 2 men had been sent by Wanjiku. The said Wanjiku was a co-wife of the deceased.

**PW 5** testified that Wanjiku had refused to accept the deceased as a co-wife. According to **PW 5**, his sister (the deceased) had told him that Wanjiku had, on many occasions, provoked, abused and then beaten the deceased in public.

It was **PW 5's** evidence that Wanjiku used to work as a police officer in Thika town.

Her husband was a senior police officer, working with the CID. He persuaded the deceased to withdraw a complaint which she had lodged with the police, after one incident in which Wanjiku had attacked the deceased.

**PW 5** gave several examples of the physical attacks which Wanjiku visited upon the deceased between 1996 and 1999. The deceased had started living with her husband, (who was also the husband to Wanjiku), in the year 1996.

From 2000, the physical attacks appeared to cease. But in 2005, the deceased informed **PW 5** that Wanjiku had threatened to "finish her."

The husband of the deceased, who was a Chief Inspector of Police, re-assured the deceased that he would deal with Wanjiku if she continued to threaten the deceased.

Instead of the matter being brought under control, the threats to the deceased increased. Towards the end of 2006, the deceased had to abandon her matrimonial home, to avoid being killed by Wanjiku.

The deceased borrowed a loan, which she used to buy a plot at Makongeni, Thika. At the beginning of 2007, the deceased started building her own house on that plot.

When Wanjiku learnt of that development, she sent people to the deceased to tell her that she would not live in the house which she was building.

In the second week of January 2008, **PW 5** was with the deceased at the plot where the deceased was building her house. The deceased informed **PW 5** that on the previous day, Wanjiku met her outside Barclays Bank, Thika Branch, and told her that she, (the deceased) had a very short time to live.

**PW 6, CPL PATRICK WANYAGI** was a distant cousin to the deceased.

On 31<sup>st</sup> January 2008 **PW 6** joined other relatives when they went to visit the deceased at the Aga Khan Hospital, Nairobi, where she had been admitted after the shooting.

Shortly after he reached the hospital, the deceased passed away.

Later, **PW 6** identified the body of the deceased for purposes of post mortem examination. He noted an injury on the chest and another injury on the thigh of the deceased.

During cross-examination, **PW 6** conceded that although he attended the post mortem examination, he is not one of the 2 people who were recorded on the post mortem form as having identified the body.

**PW 7, BERNADETTE NJERI KAWERU**, was a close friend of the deceased. She said that the deceased even became a guardian to **PW 7** after the mother of the witness passed away.

**PW 7** recalled one occasion when she and the deceased had bought eggs at Gatukuyu Shopping Centre. The eggs were in many trays, and they were due to be re-sold by both **PW 7** and the deceased.

When **PW 7** and the deceased reached near Regime hotel, Wanjiku (the co-wife of the deceased)

attacked the 2 ladies, causing all the eggs to break.

During cross-examination, **PW 7** reiterated that Wanjiku and the deceased never got along well. It was the understanding of **PW 7** that Wanjiku never accepted the deceased as a co-wife, hence the antagonism.

**PW 7's** re-collection was that the incident in which Wanjiku attacked the deceased, causing all the eggs to break, took place when the deceased was not yet married to Kamami Musembi. At that stage, the deceased was a girlfriend to the said Kamami Musembi, who was already married to Wanjiku.

**PW 7** told the court that Wanjiku was also shot dead after the murder of the deceased.

**PW 8, PAUL KARANJA WANYORO**, is a brother of the deceased.

On 2 occasions, **PW 8** witnessed disagreements between the deceased and Wanjiku. On the first occasion, Wanjiku attacked the deceased when the deceased was together with **PW 8**: they were selling eggs at Gatukuyu.

On the second occasion, **PW 8** was with the deceased in Thika Town. They had sold all their stock of eggs, and the deceased was preparing to buy a few items before leaving for home.

Wanjiku was in police uniform, and she was accompanied by 2 other uninformed police officers. Wanjiku accused the deceased of stealing her husband. She then slapped the deceased, but the other police officers intervened by going to the rescue of the deceased.

**PW 9, CHIEF INSPECTOR EMMANUEL LAGAT**, was a Ballistics Expert. He produced the Report prepared by his colleague, Lindsay Kipkemoi, who had retired in December 2009.

The whereabouts of Lindsay Kipkemoi were not known. Therefore, the prosecution informed the court that they could not trace him.

And the learned advocate for the accused had no objection to having **PW 9** produce the report prepared and signed by Lindsay Kipkemoi.

In the report, it was indicated that each of the 2 bullets that were examined, had very faint rifling striations i.e. scratches left on the bullets as they passed through the barrel of the gun which was firing them. The marks indicated that the bullets were fired from a worn-out barrel.

**PW 10, RAPHAEL NJUGUNA MUCHEMBI**, was a retired Chief Inspector of Police. He was the husband to the deceased.

As soon as he was informed that his wife had been shot, **PW 10** rushed home. He then rushed his wife to Thika District Hospital.

The doctor examined the deceased and then advised **PW 10** to rush her to another hospital, which had an Intensive Care Unit, as the chest injury was serious.

**PW 10** then rushed the deceased to Aga Khan Hospital, Nairobi.

When the deceased was undergoing treatment, she told **PW 10** that the 2 men who shot her were strangers to the Makwa area where the deceased lived.

**PW 11, PC GEORGE NDEGWA WACHIRA**, was based at the Gatundu Police Station at the material time.

On 31<sup>st</sup> January 2008, **PW 11** accompanied the DCIO, Thika, to the scene of crime. Whilst there, **PW 11**

interviewed many people, including **PW 1**, who told him that she had witnessed the shooting of the deceased.

**PW 1** informed **PW 11** that if she saw the 2 men who had shot the deceased, she could identify them. **PW 1** explained to **PW 11** that there was security lighting near the spot where the shooting took place, and also that she (**PW 1**) was near that spot when the incident took place.

The investigations of **PW 11** showed that **LUCY ELIZABETH WANJIKU KAMAMI** had assigned her sister, **JANE NJERI NJOKI KIRUMA**, to look for people who could kill the deceased.

**PW 11** traced telephone communications between the accused and the lady named Jane Njoki Karuma. It was his evidence that Wanjiku sent KShs.30,000/- to her sister, Jane Njoki Karuma, on 23<sup>rd</sup> January, 2008.

On the next day, KShs.20,000/- was withdrawn by Jane from her bank account at Equity bank, Kariobangi Branch. A further sum of KShs.10,000/- was withdrawn by Jane on 25<sup>th</sup> January, 2008.

A month later, **PW 11** learnt that the accused herein was under arrest, as a suspect for belonging to the proscribed group named Mungiki. **PW 11** escorted the accused from the Pangani Police Station, for further investigations.

After the accused confirmed to **PW 11** that his mobile phone was Number 0736 043 866, **PW 11** enlisted the services of the mobile phone provider, Zain. The trail of calls showed that the accused communicated with a man named Karish on 24<sup>th</sup>, 25<sup>th</sup>, and 30<sup>th</sup> January, 2008.

The accused also communicated with Wanjiku on 31<sup>st</sup> January 2008; and with Jane on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> February 2008.

On 3<sup>rd</sup> and 4<sup>th</sup> February 2008, the accused communicated with Wanjiku.

The three individuals continued communicating regularly between themselves until 20<sup>th</sup> February 2008.

On 27<sup>th</sup> February 2008 **PW 1** picked out the accused from an Identification Parade.

**PW 11** arrested Wanjiku, but had to release her shortly thereafter, on the instructions of his superiors.

Wanjiku and her two (2) sons were shot dead before **PW 11** got the advise of the Attorney General on whether or not she too ought to have been charged with murder.

**PW 12, JULIET SAKWA**, worked as a Revenue Analyst at Airtel, which was formerly named Zain. She identified the data which the Investigating Officer had presented to this court, as being the call data from Airtel Kenya.

**PW 12** also produced a certificate that stated that their company's computer from which the data was produced, was in good working condition at the material time.

However, although the data indicated whether the parties using the mobile phones cited were communicating through voice or by way of Short Messaging Service (SMS), **PW 12** said that she did not know the details of the said communication.

**PW 12** had personally generated the data and thereafter she issued a signed certificate authenticating the said data.

**PW 13, ANN KANANA MWITI**, was the Manager Operations at Equity Bank, Kariobangi Branch.

He testified that the bank statement cited by the Investigating Officer (**PW 11**) was of the bank's customer named Jane Njoki Karuma.

**PW 13** produced a certificate confirming that the computer, from which he produced the bank statements, was in good working order. He signed the said certificate and the bank statement.

It was his testimony that the bank had a system which was tamper-proof; the said system is the one in which they store data.

During cross-examination, **PW 13** conceded that although there were cash withdrawals from the accused, the witness did not know what the money withdrawn was used for.

After **PW 13** testified, the prosecution closed its case.

And after the accused was put to his defence, he gave unsworn testimony. He said that he was picked up by 4 police officers on 25<sup>th</sup> February 2008. They went to his place of work in Dandora, where he used to sell sand. They got him to accompany them to the Pangani Police Station. Thereafter, they took him to Gatundu Police Station.

Two days later, the officers asked him if he knew Jane Njoki Karuma and Wanjiku Kamami. His answer was affirmative.

Jane had told the accused that Wanjiku wished to sell a parcel of land. Jane asked him to find a quick buyer. That was in 2007. In the following week Jane took the accused to Wanjiku's office at Thika Police Station, where the accused was shown the Title Deed. The accused made a photocopy of the deed document.

As far as the accused was concerned, that was the extent of his association with the 2 ladies.

The accused denied any knowledge of the deceased. But the police insisted that he had conspired with Wanjiku and Jane to kill Josephine.

According to the accused, he was taken to an Identification Parade after being beaten. Therefore, he stood out amongst the other members of the parade, who were tall and clean. He was dirty and injured, he said.

The accused was picked out from the parade by a lady. But he refused to sign the parade form because he did not kill Josephine.

That marked the close of the defence case.

I have now evaluated all the evidence tendered. The evidence proves that the deceased, **JOSEPHINE WAMBUI WANYORO** died after being shot. She was shot on her thigh and on her chest.

The pathologist concluded that the cause of death was severe bleeding due to the 2 gunshot wounds.

The next question is about the identity of the person who shot the deceased. Did the prosecution lead evidence to prove that it is the accused who shot the deceased?

A lot of evidence was led to try and prove that the accused was hired by the co-wife of the deceased to kill her. The money to pay the accused was said to have been paid to him by the sister of Wambui.

The prosecution proved that Kshs.30,000/- was paid into the account of Jane Njeri Njoki Karuma. The said bank account was held at the Equity Bank, Kariobangi Branch.

The prosecution also proved that Jane withdrew the money on 24<sup>th</sup> and 25<sup>th</sup> January 2008. In effect, the money was withdrawn some 5 days before the deceased was shot dead. However, there is no direct evidence to prove how Jane used the money.

Of course, there is proof that Jane did communicate with the accused over the phone between 24<sup>th</sup> January 2008 and 5<sup>th</sup> February 2008.

The accused also communicated with **LUCY ELIZABETH WANJIKU KAMAMI** (herein cited mostly as “Wanjiku”) between 31<sup>st</sup> January 2008 and 20<sup>th</sup> February 2008.

Therefore, the contention by the accused, in his defence, that he had only known Jane and Wanjiku briefly, when Wanjiku wanted to sell a property, is obviously untrue.

The accused was definitely in contact with both Jane and Wanjiku during the time when the deceased was killed.

Nobody knows exactly what it is that the accused may have been discussing with the 2 ladies. There is only a strong suspicion that they may have been conspiring how the deceased was to be killed. Later, they were probably talking about how Wanjiku was to pay for the services rendered.

In law, suspicion, regardless of how strong it may be, cannot substitute evidence.

Of course, I am alive to the fact that conviction need not always be founded upon only direct evidence from eye-witnesses. Many times circumstantial evidence is the best evidence available.

In this case, **PW 1** testified that she saw the accused shoot the deceased twice. First, he shot her in the thigh, then he shot her in the chest.

At the spot where the shooting took place, there was lighting from electric bulbs.

And **PW 1** was only about 10 metres away from the actual shooting. Therefore, I am persuaded that **PW 1** was able to positively identify the accused.

The fact that **PW 1** did identify the accused positively was confirmed when **PW 1** picked out the accused at an Identification parade.

Furthermore, the pathologist corroborated the evidence of **PW 1**, when he found that the deceased had been shot on her thigh and on her chest.

I therefore find and hold that the prosecution has proved that it is the accused who shot the deceased, dead. In the event as the shot to the chest of the deceased must have been intended to kill the deceased, I find that prosecution has proved malice aforethought, as prescribed in **Section 206 of the Penal Code**.

The accused is thus guilty of the offence of Murder. He is accordingly convicted.

**Dated, Signed and Delivered at Nairobi, this 18<sup>TH</sup> day of October, 2012.**

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**FRED A. OCHIENG**  
JUDGE