



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 113 of 2006

REPUBLIC.....PROSECUT

OR

VERSUS

PAUL KINYANJUI

NJENGA.....ACCUSED

J U D G M E N T

The accused, **PAUL KINYANJUI NJENGA**, was charged with the offence of Murder **contrary to section 203** as read with **section 204 of Penal Code**. He is said to have committed the offence on the 3<sup>rd</sup> September 2006, at Oloirien Area Kiserian, within Kajiado District. The victim is **DAMARIS WAMBUI PETER**.

In an endeavour to prove the case against the accused, the prosecution called eight (8) witnesses.

**PW 1, JW**, was 10 years old. She has two (2) sisters and one (1) brother. All her siblings were younger than her.

**PW 1** testified that on the material day, her father arrived at home and he called out to their mother. **PW 1** said that the accused herein is her father, whilst the deceased was her mother.

When the accused arrived, he asked **PW 1** for the keys to the bore-hole. Although **PW 1** did not know where the keys were, the accused found on top of the cupboard.

**PW 1** saw the accused tie-up the deceased using a rope. He tied her neck. He then dragged the deceased out of the house, and threw her into the bore-hole.

**PW 1** testified that she did not actually witness the accused throwing the body into the bore-hole, but she believed he did so because the accused had asked her for the keys for the said bore-hole.

On the next day, the accused returned home in the evening, in the company of his mother. **PW 1's** grandmother took **PW 1** together with her other siblings to her home in Matathia.

Thereafter, the children were moved from their paternal grandmother's home, to their maternal grandmother's home.

According to **PW 1**, the accused told her not to tell anyone about where the deceased was.

However, **PW 1** did tell her auntie, Hellen Wanjiku (**PW 6**) that the accused had strangled the deceased, and had then thrown the body into a well.

**PW 2, JN**, was 7 years old. He is a son of the accused.

He testified that on the material night, his father knocked on the door but the door was not immediately opened by their mother (now deceased)

**PW 2** told the court that his sister **PW 1** informed him that their father (the accused), killed their mother by strangulating her.

**PW 2** was awake by the time the accused dragged the body of the deceased from the house.

**PW 3, CECILIA WANGUI WACAIO**, is the mother to the deceased. She told the court that the accused and the deceased were husband and wife. However, they did not have a very rosy relationship. Her daughter returned home several times, following disagreements between her and the husband.

On 4<sup>th</sup> September 2006, **PW 3** met the accused at Kiserian, and the accused informed her that he had been to her place, looking for the deceased.

The accused told **PW 3** that the deceased had run away from her matrimonial home.

On the next day, (5<sup>th</sup> September 2006), the accused took his 3 children to **PW 3's** home.

After the accused had left the children with her, **PW 3** asked the children what their father had been talking to them about. **PW 1** told **PW 3** that the accused had instructed her not to tell **PW 3** that it is the accused who had strangled their mother.

At that point, **PW 3** simply thought that the accused may have held the deceased by her neck, during a fight.

On 6<sup>th</sup> September 2006 **PW 3** reported at the Chief's office that her daughter had disappeared.

After leaving the chief's office, **PW 3** met the best-man at the wedding between the accused and the deceased. The said gentleman, together with another lady, did inform **PW 3** that the accused had recovered a letter that had been written by the deceased. In the said letter, the deceased had indicated that because life had become hard, she would be found inside a well.

The best-man is named Barnabas Gaishuguta. He accompanied the mother of the accused and some other relatives of the accused, to the well, where the body was recovered.

Meanwhile, **PW 6**, who is a daughter of **PW 3**, also informed her mother that **PW 1** had already told her that the accused had thrown the deceased into a well after strangling her.

**PW 4, DR. ZEPHANIA KAMAU**, examined the accused and assessed his age as 32 years. He also found that the accused had no bodily injuries.

Finally, the doctor assessed the accused as being mentally fit to stand trial.

**PW 5, PETER PARSALOI PULLEI**, is a retired Pastor. He is the father to the deceased.

He corroborated the evidence of his wife (**PW 3**), regarding the fact that the accused and the deceased did not live peacefully in their marriage.

**PW 5** testified that the deceased returned to her parents' home many times, after disagreeing with her

husband.

**PW 5** testified that the deceased had informed him that the accused had threatened to kill her.

On one occasion, after the accused had beaten her, the deceased even obtained a P3 Form. However, **PW 5** counseled both the accused and the deceased, and the complaint was not pursued further.

On 5<sup>th</sup> September 2006, the accused met **PW 5** in Kiserian town, and informed him that the deceased had run away from home after she and the accused had disagreed. As the disagreements were a regular occurrence, **PW 5** told the accused to go and look for the deceased.

That evening, **PW 1** informed **PW 5** that the accused had strangled the deceased, and he thereafter dragged her, using a rope.

The wife of Barnabas (the bet-man) later informed **PW 5** that the body of the deceased had been found inside a well. **PW 5** went to Kiserian Police Station, where he was to meet Barnabas. But by the time he reached the station, Barnabas had already left together with some police officers, to go and collect the body.

Within a short while, the body was escorted to the police station. **PW 5** identified the body as that of his daughter. He later escorted the body to the mortuary.

Both **PW 5** and his wife, **PW 3**, saw an alleged suicide note. But they do not know what happened to it thereafter.

**PW 5** attended the post mortem examination. At the time, the doctor conducting that exercise indicated that the lady had been strangled, using hands. The doctor also said that the body was tied up with ropes after the deceased had died.

The doctor also pointed out some bruises on the legs of the deceased, which showed that the body had been dragged on the ground.

**PW 6, HELLEN WANJIKU**, is a sister to the deceased. She was the younger of the two.

When the accused brought the children to his in-laws place, **PW 6** was present. **PW 6** talked to **PW 1**, asking her about what had happened, resulting in the children being taken to their maternal grandmother's home.

**PW 1** informed **PW 6** that when their father arrived home on material night, the deceased inquired from him where he had been. That question annoyed the accused, leading him to strangle her by the neck until the deceased fell down.

**PW 1** told **PW 6** that the accused then tied up the deceased with a rope and thereafter dragged her out.

**PW 7, SGT. AKAR GABARA**, was a police officer who was attached to the Kiserian Police Station at the material time.

On 6<sup>th</sup> September 2006, he was the Duty-Officer, when he received a report that Damaris Wambui (the deceased) had committed suicide by throwing herself into a well. The said report was delivered at the police station by the father of the accused.

**PW 7** visited the well immediately, and saw the body of the deceased.

As it was late, no attempt was made to recover the body immediately. Instead, the work was scheduled for early the following morning.

The Scenes-of-Crime personnel first took photographs at the scene before the body was removed.

The accused was present at the scene, and **PW 7** interviewed him. It was the testimony of **PW 7** that the accused informed him of a disagreement between him and the deceased after the deceased asked the former for bus-fare. Apparently, the deceased wanted to go to Kikuyu to get some luggage.

The accused told **PW 7** that he did not provide the bus-fare to the deceased, prompting the deceased to tell the accused that he would not see her again. The deceased then disappeared.

Two days later, the accused allegedly recovered a suicide note inside a Bible. The note had been, allegedly, written by the deceased.

**PW 7** saw the suicide note when the accused delivered it to the police station. The note indicated that although the deceased had no problems with anybody, she did not see any reason for continuing to live.

**PW 7** doubted the story given by the accused because the note was dated 4<sup>th</sup> September 2006, whereas the deceased had disappeared on 3<sup>rd</sup> September 2006.

**PW 8, PC RAPHAEL NZIOKA**, was on duty with **PW 7** when the father of the accused reported at the Kiserian Police Station that someone had drowned. **PW 8** accompanied **PW 7** to the scene, where they found the body of a lady inside a well.

**PW 8** testified that when the police officers interviewed the accused at the scene he told them that the deceased had killed herself by throwing herself into the well.

**PW 8** also confirmed that a suicide note was recovered. However, he did not know what happened to the said note.

To the best of his recollection, the note read as follows;

***“Mimi Wambui nimeamua kujitoa uhai kwa sababu wewe Kinyanjui umenamua kuishi na Ndunge.”***

In a nutshell, that message can be translated as follows;

***“I, Wambui, have decided to take my own life because you, Kinyanjui have decided to live with Ndunge.”***

Notwithstanding the said note, **PW 8** was convinced, from the investigations’ he carried out, that the deceased did not commit suicide. All the evidence, in his view, pointed at the accused as the person who killed the deceased.

**PW 8** also produced, as an exhibit, the Post Mortem Report signed by Dr. A. Huha. He did so after the prosecution explained that Dr. Huha was attending further studies outside the country. The prosecution did explain that it was not known when the doctor would be returning to Kenya. In the circumstances, if the court were to wait for the doctor to return, so that he could testify, there would be an undue delay in the trial.

Given that scenario, Mrs Guserwa, the learned advocate for the accused, consented to the post-mortem report being produced by the Investigating Officer.

**PW 8** testified that he was present when Dr. Huha conducted the post-mortem examination on the body of the deceased.

In the report, the doctor indicated the cause of death as **“Possible Strangulation”**

After **PW 8** testified, the prosecution closed its case. The court gave consideration to the evidence

tendered and concluded that the accused had a case to answer.

Having been put to his defence, the accused gave sworn testimony. However, he did not call any other evidence.

The accused stated that the 3<sup>rd</sup> of September 2006 was a Sunday. His wife and children went to church, leaving him at home.

After they returned home, the accused went to attend a meeting which brought together the people from the village.

When he came back from the meeting, the accused did not find the deceased at home. The children were all alone. He looked for the deceased at the neighbour's place, but she was not there.

He then returned home, where he asked **PW 1** for the keys to the store. He needed to get food to cook for the children.

After he had cooked, they had supper and went to sleep.

On the next morning, he went to his parents home and also to the home of his parents-in-law, to search for the deceased.

On 5<sup>th</sup> September 2006, the accused took his children to the home of his parents-in-law. When he got back home, he found a note written by the deceased. The note read as follows;

***“Mimi Wambui, sina ubaya na mtu lakini nimechoka na maisha. Niko shimo ya Sayori.”***;

meaning;

***“I, Wambui, I have no problems with anyone, but I am tired of life. I am in the well at Sayori's.”***

The accused took the note to his parents first. Thereafter, he took it to the police station.

Water was drained from the well on 5<sup>th</sup> and 6<sup>th</sup> September 2006, according to the accused. And the body was eventually retrieved from the well on 7<sup>th</sup> September 2006.

It is the testimony of the accused that **PW 8** took 21 samples of his handwriting; which were to be analysed by a hand-writing expert.

During cross-examination, the accused was confronted with the statement which he had recorded with the police. In that statement he had indicated that when he arrived back home on the material day, he found his wife and the children.

He had also indicated that the wife walked out of the house after she had asked him for money, and he had told her that he had none.

The accused also admitted that in his statement, he had indicated that the suicide note was recovered from the top of a cupboard; and not on a table as he told this court.

Another discrepancy between his evidence and the statement he had recorded earlier was in relation to the question as to whether or not the deceased used to work. In the statement he indicated that she used to work as a “house-girl”. But in his oral testimony he said that the wife did not used to work.

However, the accused insisted that the correct factual position is contained in his oral testimony before the court.

In the same vein, the accused had told the court as follows;

***“I wrote my statement on 5/9/06; after she disappeared on 3/9/06. At that time I did record correctly what had happened, as it was very fresh in my mind.”***

Obviously, the two versions cannot both be correct. The accused cannot have found his wife at home if she was not there. The converse is also true; that if the deceased was not at home when the accused returned from the meeting, he could not have found her there.

The contents of the written statement are in harmony with what **PW 1** saw on the material night.

The abrasions which the doctor showed **PW 5** during the post-mortem examination, corroborate the testimony of both **PW 1** and **PW 2** about the fact that the body of the deceased was dragged out of the house after the deceased had been strangled.

The ligative marks across the neck of the deceased are consistent with strangulation.

The absence of abnormality in the respiratory system of the deceased, inclusive of lungs that were intact was consistent with death before the body was dumped into the well. That means that the deceased did not throw herself into the well. She was thrown in.

I find and hold that the deceased was murdered by the accused. Accordingly, the accused is guilty of the offence of Murder, and he is duly convicted.

**Dated, Signed and Delivered at Nairobi, this 17<sup>th</sup> day of October, 2012.**

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**FRED A. OCHIENG**  
**JUDGE**