



REPUBLIC OF KENYA

High Court at Kitale

Criminal Case 11 of 2006

REPUBLIC.....PROSECUTOR.

VERSUS

JOHN NDIRANGU KIMANI

MARY CHEROTICH KIMANI

JACKSON KAMAU MUCHEMA

DANIEL KUNGU MUCHEMA.....ACCUSED.

J U D G M E N T.

The two accused, **John Ndirangu Kimani** and **Mary Cherotich Kimani**, are charged with murder contrary to section 203 read with section 204 of the penal code, in that on the night of 19th January, 2006 at Rokor village Marakwet District, jointly with others murdered Edward Thiga.

The two accused were initially charged with two other persons who after the close of the prosecution case were found not to have a case to answer and were acquitted under section 210 of the Criminal Procedure Code.

Be that as it may, the prosecution case was that the deceased lived in one house with **Albert Maina Kinuthia (PW1)** and on the material date at about 7.00 p.m. He was allegedly called out from the house by the second accused, with whom they enjoyed an illicit relationship since she was married to the first accused.

Kinuthia (PW1) said that the deceased and the second accused had been friends for over one year and that the deceased had intimated that he would marry the second accused and take her away to Kericho.

The deceased did not return home after being called out by the second accused on that material date; Kinuthia went in search of him on the following day but all in vain. He later informed the relatives of the deceased of his disappearance. A search for him was mounted with the help of the area chief and village elders and on the 27th January, 2006, the dead body of the deceased was found beside a small river. The body had a cut on the side of the face and the right ear was missing.

The police removed the body to the mortuary and later village elders commenced investigations as to where the deceased had been killed since there were not blood stains at the place where his body was found. Five houses were searched including that of the first accused in which blood stains were

found. The first accused was suspected of having killed the deceased and was arrested. His wife, the second accused, was traced in Kapenguria and also arrested.

David Kiptanui Kimisto (PW2), a farmer at Kapcherop division Marakwet District heard screams from a nearby river. He proceeded there and learnt that the body of the deceased had been found at the river. He had previously been informed that the deceased had disappeared. He assisted in conducting searches in neighbouring houses. He said that about ten (10) houses were searched and in a shamba (farm) belonging to the first accused, blood stains were found on stokes of maize. Foot prints from that spot led to the homestead of the first accused where blood stains were found outside a kitchen.

A farmer, **Joshua Kariuki (PW3)**, also took part in the search. He confirmed that blood stains were found on maize stokes in the farm belonging to the first accused and also outside a kitchen in the homestead of the first accused. He also took part in the search for the deceased when he disappeared. He confirmed that the body of the deceased was found at a river bank with injuries.

James Karanja Kamau (PW4), identified the body of the deceased for purposes of post-mortem. The deceased was his brother.

The deceased's brother in law, **Simon Ndwiga Nganga (PW5)**, was informed of the disappearance of the deceased and was in the search party which found his body by a river bank. He implicated others for the death of the deceased and not the first and second accused.

David Mugo Njino (PW6), also implicated others but not the first and second accused. These others were the co-accused who were found by the court to have no case to answer.

P.C. Fredrick Gitari (PW7), was at the material time attached to Kapcherop police station. He received the first and second accused after they were arrested for the death of the deceased. He investigated the case and obtained a blood stained maize cob and a blood stained cushion both of which were later forwarded to the Government chemist for analysis. He (PW7) indicated that the results were negative. He charged the two accused with the present offence on completion of his investigations.

In his defence, the first accused (John Ndirangu Kimani) denied the offence and stated that on the 19th January, 2006, bandits invaded that area and fired gunshots upto 6.00 p.m. He remained within his home and on the 28th January, 2006 went to a local Administration Police Camp where he was arrested without being given any reason. He was thereafter taken to Kapcherop police station and remained there for some days before being charged with the present offence. He contended that the deceased was not known to him. As for the second accused (Mary Cherotich Kimani), she also denied the offence and reiterated more or less what the first accused stated. She added that she went to Kapenguria town with her children until such time that she was summoned and questioned by a local chief. Thereafter, she was directed to report at her local A.P. Camp and when she did so, she was arrested and taken to Kapcherop police station prior to being charged in court with the present offence.

It is apparent from all the foregoing evidential facts that the deceased was called from his house where he lived with Kinuthia (PW1) on the material 19th January, 2006. Kinuthia alleged that the deceased was called by the second accused who was the wife of the first accused but was involved in an extra marital affair with the deceased. He (PW1) did not actually see the second accused but heard her voice when she called out for the deceased as she often did. He said that he was familiar with her voice.

Both the first and second accused indicated that they were at their home on that material date when bandits attacked their area. The first accused indicated that he was not even known to the deceased and by her defence, the second accused implied that she did not call the deceased on that 19th January, 2006 as alleged by Kinuthia (PW1).

In whatever circumstances that the deceased left his house, there was no cogent evidence that the second accused was the last person seen with him prior to his disappearance and eventually the recovery of his

dead body at a river bank.

The prosecution through most of its witnesses adduced evidence to show that the two accused were suspected and arrested for killing the deceased on the basis that blood stained maize stocks or cob were found in their farm along with blood stains near a kitchen to their house. However, the blood stains were forwarded to the government chemist for analysis but according to the investigating officer (PW7) the results were negative meaning that the two accused were not linked to the death of the deceased by the blood stains.

What the prosecution succeeded in doing was to merely show that the deceased disappeared from his house and was later found having been murdered. There was no evidence from the prosecution establishing directly or indirectly that the two accused were responsible for the murder. Undoubtedly, strong suspicion may have existed on account of the blood stains found in the home and farm of the two accused and on account of the alleged illicit relationship between the deceased and the second accused. But suspicion, however strong, must be confirmed by cogent and credible evidence in order to find a suspect guilty of the offence facing him or her.

Herein, there is no cogent and credible evidence proving that the deceased was assaulted and murdered by the two accused.

Consequently, it must be held that the prosecution has failed to prove its case against the two accused as required by law.

The two accused are therefore found not guilty as charged and are both acquitted accordingly.

[Delivered and signed this 18th day of December, 2012.]

J.R. KARANJA.

JUDGE.