



**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**CRIMINAL CASE NO. 80 OF 2007**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ANASTASIA WANJIKU NJOROGE..... ACCUSED**

**RULING**

The accused, **Anastasia Wanjiku Njoroge**, is charged with the murder of her 2 ½ year old daughter, **Mary Nyambura** (the deceased). It was alleged that on **2<sup>nd</sup> July, 2007** at Muchorwe Centre in Molo the accused murdered the deceased.

Evidence adduced by the prosecution witnesses was to the effect that after the accused person's mother (perhaps a single parent) died, she and the deceased went to live with her grandmother. The father of the deceased who was identified as **Joseph Kariuki**. He did not live with the accused but are said to have been only friends.

On 7<sup>th</sup> July, 2007 **PW3, Nancy Waithera**, the accused person's sister-in-law got information that the accused had thrown the deceased into a pit latrine. A report was subsequently made to the police.

**PW4, P.C. James Agutu** and other police officers in the company of the accused person went to the scene where the body of the deceased was retrieved. Upon examination, the doctor was of the view that the body had been in the latrine for about one week as the skin had peeled off.

On further examination the doctor formed the opinion that the deceased must have been dumped in the latrine while alive due to the presence of faecal matter in the trachea. Other than the peeling of the skin there were no physical injuries. In the opinion of the doctor the deceased died as a result of asphyxia secondary to aspirated decomposing faecal matter.

As disjointed and as brief as stated, that was the prosecution evidence against the accused person.

The question for determination at this stage is whether that evidence discloses a *prima facie* case against the accused. As was explained in the celebrated case of **Ramanlal Trambaklal Bhatt v R** (1957) EA 332 a *prima facie case* is defined as one:

**“ . . . on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”**

Though there was evidence that the body of the deceased was retrieved from a pit latrine, there was no evidence to show who in fact dumped it. Without direct evidence the prosecution relied on circumstantial evidence to charge the accused person. The circumstantial evidence presented was:

- (i) that the accused was the mother of the deceased
- (ii) that some people reported to PW3, Nancy Waithera that the accused had dumped the deceased in a pit latrine
- (iii) that the accused led the police to the scene where the body of the deceased was found.

Circumstantial evidence will be a basis for conviction if the evidence presented points irresistibly to the guilt of the suspect to the exclusion of all others and if there are no co-existing circumstances that would weaken or destroy the inference of the suspect's guilt. See **Kipkering Arap Koske & Another** (1949) 1 EACA 135 and **Simeon Musoke Vs. Republic** (1958) EA 715.

The mere fact that the accused person was the mother of the deceased cannot of itself be evidence that she must have killed her. The name of the accused person's boyfriend and the father of the deceased came up a number of times in evidence. He was called. There was no evidence the accused was at any time with the deceased before the deceased disappeared. None of the people who informed PW3, Nancy Waithera that the accused had thrown the deceased in the latrine was called. Waithera's testimony only amounted to hearsay. To ask the accused to defend herself will amount to asking her to fill the gaps left in the prosecution case. She is not under any such obligation.

P.C. James Agutu stated that the accused led them to the scene, but confirmed that already other people had been to the scene. Therefore it should not appear that the accused was the first to direct people to where the body was. Up to this stage of the trial there is no evidence to link the accused person with the death of the deceased.

For these reasons the accused is acquitted of the charge of murder and shall be set at liberty forthwith unless lawfully detained.

**Dated and delivered at Nakuru this 4<sup>th</sup> day of February, 2011.**

**W. OUKO**  
**JUDGE**