



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 86 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK NJURUI GITAU.....ACCUSED

JUDGMENT

The accused, **PATRICK NJURUI GITAU**, 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 the accused murdered **MONICA GATHONI GITAU** on 2nd October 2008, at Gatundu market in Thika District, Central Province.

At the trial, the prosecution called 9 witnesses.

PW 1, VERONICA GATHONI, was the daughter of the accused, and a grand-daughter to the deceased. She testified that on 8th October 2008, she heard an announcement over the radio, to the effect that her father had killed the deceased.

PW 1 was one of the persons who identified the body of the deceased at the City Mortuary, for purposes of post-mortem. She was with **PW 3** at the City Mortuary; and the two of them were escorted by **PW 6**.

When **PW 1** looked at the body, she noted that it had a wound at the back of the head.

PW 2, DAVID KAGOIYO KIMANI, was a friend to the accused.

On 1st October 2008, **PW 2** was going to make a report at the PCEA Church, Marima, Gatundu. That church was located opposite the home of both the deceased and the accused.

Before **PW 2** got to the church, he met with the accused, who was panting, whilst holding a panga in his right hand. Although the accused had been a friend to **PW 2** for many years, **PW 2** did not greet him on that occasion because the accused in a state which **PW 2** found to be incapable of being understood.

After **PW 2** finished the business which he had gone for at the church, he noticed a large crowd, outside the house of the deceased. He went to that scene, where he saw the deceased lying down, whilst bleeding from the head.

PW 2 rushed to seek help at the Gatundu Police Station. When **PW 2** reached the station, he found that the accused had already arrived there.

PW 2 was escorted back to the scene by one police officer. The said police officer then escorted the victim to the Gatundu District Hospital. Meanwhile,

PW 2 passed through the police station, to get a note, which was to assist in getting speedy medical attention for the victim.

Although the victim did receive medical treatment, she succumbed to her injuries.

When **PW 2** was asked about the panga which he saw the accused holding, he said that it was a normal panga. He explained that he had not taken any special interest in the said panga. He was therefore unable to tell the court whether or not the panga that was in court was the same one that he saw the accused holding on the material morning.

PW 3, JOHN NGUGI KARUNDI, was a brother-in-law to the deceased. His brother was the husband to the deceased. He testified that on 8th October 2008, he and **PW 1** identified the body of the deceased, at the City Mortuary.

PW 3 saw an injury on the head of the deceased.

PW 4, PC PAUL CHELELGO, was on duty at the Gatundu Police Station on the morning of 1st October 2008.

At about 10.45a.m., the accused arrived at the police station, holding a panga. The accused told **PW 4** that he had killed his mother.

PW 4 took the panga, which he handed over to **PW 6**, who was the duty-officer.

PW 4 then arrested the accused, and placed him in the cells. Thereafter, **PW 4** handed over the case to **PW 6**.

In other words, apart from arresting the accused and handing over the panga to **PW 6**, **PW 4** played no further role in the case.

When he was asked about the panga which he recovered from the accused, **PW 4** said that it had a black handle, and also that it was not blood-stained. When shown Exhibit 1, **PW 4** identified it as the panga which he recovered from the accused.

PW 5, PC WILLIAM KOMBO, was on duty at the Gatundu Police Station on 1st October 2008, when the Deputy OCS (**PW 7**) ordered him to accompany him (**PW 7**) to the scene of crime.

At the scene **PW 5** found a lady lying down, bleeding profusely from a serious head injury. **PW 5** asked a member of the public to assist in taking the lady to hospital. The gentleman complied, and took the lady to Gatundu District Hospital.

Thereafter, **PW 5** returned to the police station, where he found the accused. **PW 5** learnt that the accused had brought himself to the police station, whereupon he was arrested.

PW 6, CPL. BENJAMIN WAMBUA, was on duty at Gatundu Police Station on 1st October 2008, when **PW 4** took a panga to him. On that date, **PW 4** was the duty-officer at the Report Office, whilst **PW 6** was working in the Crime Officer.

When **PW 4** was handing over the panga to **PW 6**, he was accompanied by the accused. **PW 4** told **PW 6** that the accused had told him that he had killed his mother, by cutting her with a panga.

PW 6 asked the accused if that was true, and the accused told **PW 6** that it was true that he had killed his mother using the panga which he had brought to the police station.

PW 6 kept the panga as an exhibit.

Later, when **PW 7** arrived, **PW 6** reported to him about what had transpired. **PW 6** then accompanied **PW 7** to the Gatundu District Hospital, where they found the victim, whilst she was being attended to by doctors at the Casualty Ward.

PW 6 visited the lady in hospital on 2nd and 3rd October 2008. However, the lady was unable to talk. Eventually, she passed away.

On 8th October 2008, **PW 6** attended the post mortem examination at the City Mortuary.

He also prepared an Exhibit Memo Form, which he forwarded to the Government Chemist, Nairobi, together with the panga. After the panga had been analysed, **PW 6** collected it from the Government Chemist.

PW 6 confirmed that Exhibit 1 was the panga which the accused told him, he had used to kill the deceased.

During cross-examination, **PW 6** said that when he killed his mother, the accused told him that they had disagreed.

PW 7, INSPECTOR SAMUEL KIPONDA, was on duty at Gatundu Police Station when **PW 2** arrived and told him that the deceased had been slashed with a panga. **PW 2** told **PW 7** that the culprit was a son to the deceased.

PW 7 ordered **PW 5** to rush to the scene of crime, from where he was to rush the victim to hospital. Thereafter, **PW 7** went with **PW 6**, directly to Gatundu district Hospital. When they reached the hospital, they found the victim, who was bleeding profusely. The victim was being attended to by doctors.

When **PW 7** returned to the police station, he found that the accused had brought himself there. **PW 7** learnt that the accused had also brought a panga at the station.

On 3rd October 2008, **PW 7** learnt that the victim had passed away. He went to the hospital, where he verified her death.

PW 8, DR. ROSA CHEMWEY NDIEMA, examined the accused on 7th October 2008. The police officer from Gatundu Police Station, who accompanied the accused, asked **PW 8** to assess the mental status of the accused.

PW 8 found that the accused was well oriented in time. She concluded that the accused was both physically and mentally sound.

The doctor assessed the mental age of the accused as between 64 and 67 years. The said mental age of the accused tallied with his physical age, indicating that the accused had no mental impairment.

PW 9, DR. DANIEL AMAKABANE, produced the Post-Mortem Report that was prepared by Dr. Njeru. He did so, with leave of the court, after the prosecution indicated that Dr. Njeru, who had examined the body of the deceased, had resigned from Gatundu District Hospital. Dr. Njeru's whereabouts were unknown.

In the report, the pathologist had concluded that the cause of the death of MONICA GATHONI was head injuries.

After the prosecution closed its case, the court placed the accused on his defence. He then gave sworn testimony, but did not call any other witnesses.

It was the defence case that on the material day, he found a lot of noise in the homestead when he arrived from the shamba. He did not enter the homestead, but went straight to the police station, whilst carrying a panga.

At the station, he told the police officers that they should go and arrest the people who were drinking and making noise at his mother's homestead. However, the police did not have any officers who could attend to the issue. They asked him to wait at the station.

But a short while later, **PW 6** placed the accused in custody, allegedly for killing his mother. However, the accused denies killing his mother. He said that he did not know what happened.

He said that if he had used the panga, it would have been bloody.

Having given due consideration to the evidence on record, it is clear that there was no eye-witness to the killing of the deceased. All the evidence tendered was circumstantial.

Therefore, I am alive to the fact that if a conviction was to be founded on such circumstantial evidence, the same must point exclusively at the accused as the person who committed the act. There should be no room for any doubt about the culpability of the accused.

In this case, the facts are largely unchallenged. First, it is clear that the deceased was the mother of the accused, and that the two of them lived within one homestead. There were no other persons who lived with them.

On the material day, he went to the shamba, carrying a panga. When he was from the shamba, he still had

the panga.

PW 2 saw him carrying a panga. At that time, the accused was coming from the direction of his mother's homestead. And although he and **PW 2** were long-term friends, **PW 2** did not greet him. The reason why **PW 2** did not greet him is that the accused was in a state that **PW 2** found to be un-understandable.

The accused confirmed having met **PW 2** on that material morning.

However, he says that he did not enter the homestead. His story was that he saw four (4) men who were not good people. They were drinking and jumping up and down. He was therefore frightened.

But when the accused was asked about the identity of the four men, he said that he did not know them. It therefore defies logic that the accused knew the four men to be bad people, yet he did not know their identities.

Secondly, the accused testified that whilst the four men were drinking, his mother, (the deceased) was inside the house ululating. He said that she was happy. In those circumstances, there would have been no reason for the accused to be frightened, as he alleged he was.

In any event, he was armed with a panga, whilst the four men were not armed; or at least the accused did not say that they were armed. He then met **PW 2**, who was a long-term friend.

Had the accused had reason to genuinely feel frightened, he could have solicited the help of **PW 2**; but he did not.

Having analysed the defence, I find it to be implausible.

I find that the only reason why the accused went to the Police Station was to give himself up after he had fatally wounded his mother.

He injured his mother because she disagreed with him. That is what the accused told **PW 6**. As the two of them lived alone in their homestead, nobody knows the exact reason for the said disagreement.

Furthermore, the injury to the deceased was so severe that when the accused caused it, he must be deemed to have either wanted to kill her, or he did not care about the probable consequences of his actions.

By dint of the provisions of **section 206 of the Penal Code**, the accused is deemed to have had malice aforethought.

In the result, I find and hold that the accused caused the death of the deceased, MONICA GATHONI GITAU. He did so unlawfully, and is therefore guilty of Murder contrary to **section 203 of the Penal Code**. He is accordingly convicted for that offence.

Dated, Signed and Delivered at Nairobi, this 19th day of May, 2011

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FRED A. OCHIENG

JUDGE