



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL CASE 12 OF 2006

REPUBLIC ::
PROSECUTION

-VERSUS -

JULIUS KAMAU MBUGUA ::
ACCUSED

J U D G M E N T

The accused herein, **Julius Kamau Mbugua, [hereinafter referred to as the accused]** is charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code.

The particulars of the charge are that on the 19th day of September, 2005, at Gatunyu village, in Thika District within Central Province, unlawfully murdered **Milcah Wanjiru Wamanji. [hereinafter referred to as the deceased]**

The prosecution called **9 witnesses** in support of its case.

Paul Wamanji (PW 1), a son to the accused and the deceased testified that he was in the Kitchen with his brother, Christopher Ndegwa (PW 8), on 19th September, 2005. His mother arrived home at about 4.00 p.m and commenced the preparation of supper. After supper his parents retired to their bedroom. They remained in the Kitchen which doubled as their bedroom. The said kitchen was next to his parent’s bedroom. Any sound in their parent’s bedroom could be heard in the kitchen and vice-versa.

Shortly thereafter, he heard his father demanding money for cigarettes from his mother. It suffices to say that his mother declined the request. An argument then ensued. Subsequently, he heard a bang followed by a loud cry. Out of curiosity he tried to go into the bedroom but he was ordered by his father to go outside. He then returned to the kitchen – cum-bedroom.

At that juncture, his father confided in him that his mother was unwell. That there was need to hire a vehicle to take her [mother] to the hospital. PW 1 and the accused then set on a mission of looking for a vehicle. In the intervening period, his father delegated to Beth Wangari (PW 4), the responsibility of looking after his mother, while they went for a vehicle.

They were lucky to get a vehicle for hire to take the deceased to the hospital. However, he did not accompany his mother to the hospital. Equally, he was not able to talk to her mother before she was taken to the hospital. His father came back from the hospital the same night but did not disclose to him the condition of his mother.

The following day, in the morning, his father sent him to tell his maternal grandmother that her daughter was ill and was hospitalized. When he came back he found a big crowd in their homestead. He then learnt that his mother had since passed on.

Wambayi Wambiru (PW 2), received information from Paul Wamanji (PW 1), that Rachel Wanjiru (the deceased) had been hospitalized at Thika District Hospital.

He sent his wife, **Virginia Kivoi Wamanji**, to go and assess the condition of their daughter. His wife came back with the sad news that their daughter had passed on.

Subsequently, he attended the mortuary and identified the body of the deceased for purposes of post-mortem. After post-mortem the body of the deceased was released to him for burial.

Dr. Peter Ndegwa PW 3, a pathologist, employed in the Ministry of Health, and attached to the City Mortuary, performed post-mortem on the body of the deceased upon identification of the body by Washington Gitau and Wamanji Wambiru [PW 2].

He observed that there was peripheral synopsis and the abdomen was distended. There were signs of increased intra-cranial pressure on the head. He opined that the cause of death was due to brain contusion occasioned by head injury as a result of blunt force. He filled and signed the post-mortem report which he produced as Exhibit 1.

Beth Wangare (PW 4), was summoned by the accused on the 19th day of September, 2011 at 8.00 p.m. She found the deceased in bed. The accused was trying to help her put on clothes. PW 4 urged the accused to look for a car to take the deceased to the hospital. The accused explained to her that when he came from the funeral on Monday he found the deceased unwell. The deceased was complaining of headache. PW 4 accompanied the accused as he took the deceased to the hospital. The doctor, on arrival, confirmed that she was no more – dead.

Virginia Kivoi Wamanji (PW 5), the mother to the deceased, recalled that on 20th September, 2005, her son in law (the accused) sent her grandson, Paul Wamanji (PW 1), to tell her to visit the deceased at the hospital. She decided to go but her husband declined. On the way she got information that her daughter had died. She fainted out of shock.

Philip Wangila F.N 95047885 (PW 6), received a letter from the OCS Kirwara ordering him to arrest the accused in connection with the death of his wife. He did so on 7th November, 2005 and escorted him to Kirwara Police Station. He positively identified the accused in Court.

CPL Duncan Kareko F.NO 81011521 (PW 7), accompanied PW 6 at the time of the arrest of the accused. He essentially echoed the testimony of PW 6.

Christopher Ndegwa (PW 8), a son to the accused and deceased gave evidence after undergoing *voir dire*.

He recalled that on 19th September, 2005 at 9.00 pm, he went to look for his shoes in his parents' bedroom. He found his father carrying a metal bar. His father ordered him to go outside. He was reluctant. While still within the vicinity, he saw his father hitting his mother using a metal bar. Visibility was aided by a lantern lamp in the bedroom. He went and informed his brother Paul Wamanji (PW 1) who incidentally had heard a bang. Subsequently, his brother Paul Wamanji (PW 1) and his father went to look for a vehicle to take his mother to the hospital. His father warned him not to tell anyone about the incident.

P.C Joseck Mwale Murule, F No.975975 (PW 9), was instructed to investigate a murder case involving the accused who had been arrested on 7th November, 2005. Among other things, he arranged for a post-mortem to be done on the body of the deceased. Thereafter he conducted further investigations.

Among other things, he arranged for mental and age assessment examination of the accused on 7th December, 2005. Subsequently, upon completion of investigations, he caused the accused to be charged with the offence of murder.

At the end of the prosecution's case, I put the accused on his defence after explaining to him the provisions of section 306(1) of the Criminal Procedure Code.

In his sworn statement the accused testified that his wife had a bad leg prior to her demise. On 15th September, 2005 he came back from the funeral of his sister at Ol Kalaou, in the company of his son Simon Ndungu, among other mourners, who had accompanied him. He found his wife sleeping. She told him that she was still unwell. He promised to take her to the hospital the following day. By 19th September, 2005 the deceased was still unwell. He then sent his son Paul Wamanji [PW 1] to call Beth Wangari (PW 4) to assess the condition of the deceased. Beth opined that the deceased was quite unwell. She then advised the accused to hire a taxi to take the deceased to the hospital. He took her advice and hired a vehicle belonging to one Njoroge for that purpose. Unfortunately, the deceased passed on before reaching the hospital. He then sent his son Paul Wamanji (PW 1) to inform his in-laws of the unfortunate incident.

David Mbugua Kamau (DW 2), recalled having had a telephone conversation with his mother with regard to the injury to her leg. She was on her way to Thika District Hospital for treatment when they had the said conversation. He gave the deceased bus fare of Kshs 200/=. A few days later he heard that his mother had died. However, his father did not attend the funeral of her mother because he was suspected to have caused her death. His mother, by reason of the controversy surrounding her death, was buried at his grandparent's home.

Against that backdrop of evidence, it is common ground that the accused and the deceased retired to their bedroom after supper on the 19th day of September, 2005. This comes out clearly from the evidence of PW 1 and PW 8 who are the children of the accused and the deceased.

While at the bedroom, the accused demanded from the deceased money to buy cigarettes. The deceased declined. A quarrel ensued. This attracted the attention of PW 1 and PW 8, both children of the couple. It is, however, in dispute whether the quarrel ended up in the battering of the deceased by the accused. Both PW 1 and PW 8, on the one hand testified that they saw the accused with a metal bar just before this incident. PW 8 particularly testified that he witnessed the actual act of assault in the bedroom of the couple. PW 1 testified that he heard a bang. The evidence of PW 1 and PW 8 thus forms part of the *res-gestae*. The accused, on the other hand, deny that he hit the deceased on the head using a metal bar.

So soon after the incident in the bedroom, the deceased who was hitherto well suddenly became ill. This necessitated the hiring of a vehicle to take her to the hospital. Unfortunately, the deceased succumbed to her injuries on the way to the hospital. The post-mortem examination report, by Dr. Peter Ndegwa (PW 4), disclosed peripheral synopsis occasioning the abdomen to be distended. Most importantly, there were signs of increased intra-cranial pressure. The good doctor opined that the cause of death was due to brain contusion occasioned by head injury as a result of blunt force.

I have evaluated the evidence as a whole. In the process I have taken into due consideration the evidence of the accused that the deceased had been nursing a wound in her leg prior to the incident of 19th September, 2005. That the said wound necessitated medical attention at Thika District Hospital. I have equally taken into due consideration the evidence of PW 1 and PW 8 who heard a bang and saw the actual assault respectively, on the person of the deceased, by the accused. However, having regard to the fact that the deceased was reasonably well before this incident to the extent that she even prepared supper for her family, I disbelieve the evidence of the accused that the deceased died as a result of a headache and a wound in her leg. I find as a fact that the deceased died in the hands of the accused. I base my reason for so finding particularly, on the evidence of Dr. Peter Ndegwa (PW3) who testified that the deceased died of intra-cranial pressure to the skull that is consistent with a blunt force which would have originated from a blunt object. I find as a fact that a metal bar could exert blunt force. I equally base my reason for

so finding on the evidence of PW 1 and PW 8, the children of the couple, who witnessed the actual incident of assault on the person of the deceased. The said children were sleeping in the kitchen neighbouring the couple's bedroom. The proximity of the two bedrooms lends credence to the assertion that the children saw and heard what happened that fateful night.

In the premises, given the sum total of the evidence adduced, it is only the accused who was in the bedroom with the deceased shortly before she became suddenly ill thus necessitating the hiring of a taxi to take her to the hospital. It is only the accused who knows what caused the injury to the head of the deceased leading to intra-cranial pressure to the head. That fact was within the special knowledge of the accused. Only he could explain specifically how the deceased sustained injuries to the head and the abdomen that made her suddenly ill culminating into her demise.

The accused sworn statement in his defence does not, appear to me to, discharge that burden put squarely on him courtesy of section 111(1) of the Evidence Act (Cap 80) Laws of Kenya of proving circumstance which would exonerate him from blame. In doing so, I have not lost sight of the provision of section 111(2) of the Evidence Act (Cap 80) Laws of Kenya which in effect provides that section 111(1) does not diminish the obligation on the prosecution to establish by evidence the commission of the offence charged.

Having critically examined and considered the evidence adduced by the witnesses for the prosecution and the defence of the accused. And having weighed one as against the other, I find that it is the accused who caused the death of the deceased. The nature of the injuries disclosed by the post-mortem report is commensurate with a blunt force to the head that led to intra-cranial pressure to the brain. In other words the injuries to the head are consistent with a blunt force. A metal bar is such one object that could have caused the intra-cranial pressure to the head.

Having so found, I now hold that the acts of the accused in hitting the head of the deceased using a metal bar constitutes *malice-aforethought* as defined in section 206 of the Penal Code.

It is on the basis of the foregoing that I now ultimately hold that and find that the accused is guilty of the offence of murder as charged. Accordingly, I enter a verdict of **GUILTY**.

I sentence the accused to serve thirty (30) years imprisonment, after taking into due consideration, the mitigating circumstances tendered by the accused through his advocate.

The accused has right of appeal within 14 days from the date hereof.

Dated and delivered at Nairobi this 18th day of October, 2011

N.R.O OMBIJA
JUDGE