



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS Criminal Case 30 of 2007

REPUBLIC

VERSUS

LUKAS NDONYE KYOMEACCUSED

JUDGMENT

1. Lucas Ndongye Kyome is charged with the offence of murder contrary to section 203 and section 204 of the Penal Code. It is alleged that on 5.6.2007 at 12.30a.m at Muumandu Shopping Centre, in Machakos District, he murdered Pauline Mukui Peter.
2. The evidence tendered is that on the night of 5.6.2007 PW1, Peter Nithiwa, a neighbour of the accused person and the deceased, who was the accused's wife, was woken up by the accused shouting and asking;

“Mukui, umenifanya nini?”

(Mukui what have you done to me?)”

3. Shortly thereafter, the accused woke up PW1 and told him,

“I have cut Mukui’s throat and you should take me to the police to be killed or jailed.”

4. PW1 went inside his house and when he came out, blood was flowing from the accused’s house and so he took him to a nearby AP Post and the accused was arrested.
5. PW2, Patrick Lumumba received a call from the accused’s brother on the material night who told him that the accused had killed his wife and so PW2 went to see the accused’s uncles and then proceeded to the AP Post where the accused was being held. PW2 then called the OCS Machakos and when the police officers came he escorted them to the scene and saw that the deceased had multiple stab wounds. The body was then taken away.
6. PW2 also added that prior to the incident, the accused had disappeared from home for 3 weeks and only after a search for his whereabouts by PW2 among others that he was traced and he returned home.
7. PW3, Dr. Joseph Mutuma performed the post-mortem and concluded that the cause of death was hemorrhage due to stab wounds to the neck.
8. PW4, Dr. Monica Muchemi Wang’ombe a Psychiatrist at Mathari Mental Hospital Produced a report showing that the accused narrated to one Dr. Susan Hinga that he killed his wife because she had appeared to him in a dream and wanted to kill him. That she also practiced witchcraft and took alcohol. After his arrest, he was found to be mentally ill and he was treated for 4 months at Mathari Mental Hospital and during that period, he was reported to be seeing evil spirits that looked like human beings and others like cats.
9. The conclusion made was that the accused person was ***“having psycho-affective disorder and***

at the time of the crime he laboured from mental illness” and that “he needs follow-up medication because the illness is severe.”

10. During cross-examination PW4 said that;

“Many people kill others based on dreams that they see. Each case is treated differently.

The accused is not criminally responsible for his actions”.

11. PW5, Cpl Jairus Mbondo did not investigate the case but took over the police file from the Investigation Officer. He then produced a Government Chemist report indicating that the blood on a knife picked at the scene as well as on the clothes in the house belonged to the deceased.

12. The accused in his defence said that he was attacked by evil spirits on the material night and he cannot recall what happened. That he only recovered when he was at Mathari Mental Hospital where he was told that he was mentally ill.

13. What is not in doubt from the above evidence is that the accused and no other person murdered the deceased. The evidence of PW1 and PW2 is unchallenged and the fact that the Government Chemists report confirmed that the blood on the accused’s trouser and t-shirt had the deceased’s blood corroborates that fact.

14. The only issue to determine is whether the accused had the mental capacity to make a clear intention to kill. The evidence of PW2 was that the accused had disappeared from home a short while before the incident. The evidence of PW4 was that in fact the accused had claimed that he had been kidnapped and while in Mombasa, he wondered about his wife’s conduct. He was said to have been seeing evil spirits and at the time of the incident he was mentally ill. If so, then he

clearly had no capacity to form an intention to kill and he is not responsible for those actions. **See**

R vs Jeremano M'Ngai [1980] KLR 18.

15. That being the case, section 166 (1) (b) of the Criminal Procedure Code properly applies and although I will convict the accused person, I will find him guilty but insane and I shall report his case for an order of His Excellency the President and in the meantime, he shall be kept in custody.

16. Orders accordingly.

Dated and delivered at **Machakos** this **11th** day of **February 2010**.

Isaac Lenaola

Judge

In the presence of; Mr. Omirera for Republic

Accused present

Isaac Lenaola

Judge