



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI Criminal Case 33 of 2006**

REPUBLIC.....PROSECUTOR

VERSUS

LUCY WANGUI GICHOHI.....ACCUSED

**RULING**

**LUCY WANGUI GICHOHI** hereinafter referred to as the 'accused' is before this court on the information of the Attorney General dated 13<sup>th</sup> November 2006 to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on the nights of 10<sup>th</sup> and 11<sup>th</sup> August 2006 at Ndugamano Village in Nyeri District within Central Province she murdered Richard Gichohi Kairu. The prosecution was forced to close its case after presenting the evidence of four (4) witnesses when it became apparent that the investigating officer had intentionally refused to bring witnesses to court to testify, for reasons best known to him. Learned counsels appearing in this matter were called upon to make submissions under *Section 306* of the Criminal Procedure Code on whether or not the accused should be placed on her defence. That is the subject matter of this ruling.

It is the submission of Mr. Muguku, learned advocate for the accused, that the prosecution have failed to make out a *prima facie* case which would enable this court place the accused person on her defence. Mr. Muguku pointed out that the prosecution had failed to tender the evidence of the investigating officer and that of the doctor. Miss Ngalyuka, learned Senior State Counsel, was of the view that the evidence were sufficient to show that the prosecution had established a *prima facie* case.

I have carefully considered the evidence of the four prosecution witnesses. **SAMUEL KIBUKA GATIMU** (P.W. 1) told this court that the deceased went to P.W. 1's house at 2.00 a.m. while writhing in great pain. P.W. 1 claimed the deceased was with serious burns all over the body. P.W.1 and **SAMUEL WACHIURI GICHOHI (P.W.2), SAMUEL KAMAINA MURATHA (P.W. 3)** and **JOHN WARUGONGO** (P.W. 4) made arrangements to transport the deceased to Nyeri Provincial General Hospital. While transporting him to hospital, P.W. 1 said that the deceased told him that he suspects his wife (accused) could have burnt him with the house due to the fact that they had separated. The only evidence which tended to link the accused to the offence is the alleged death declaration made to P.W. 1 by the deceased. Unfortunately there was no postmortem report which was produced to establish the cause of death. The death declaration merely implicated the accused as a suspect because the deceased thought that since he had separated with his wife (accused), the accused was on a revenge mission. There was no evidence tendered to show that the accused was at the scene of crime or that she was within the vicinity during the fateful night. There is no doubt that the postmortem report was not produced due to the laxity of the Police investigating the offence. In such a case, even if there was clear evidence as to who committed the offence, it was necessary for the cause of death to be established in order for the prosecution to prove a *prima facie* case. In the case of **HILLARY BWIRE WAFULA =VS= R CRIMINAL**

**APPEAL NO. 8 OF 1996 (Unreported)** the Court of Appeal stated interalia as follows:

*“Having said what we have said above and counsel for the State having admitted that the failure to call the doctor left the cause of death unclear, it could not be said that there was no reasonable doubt as to whether it was the appellant’s assault on the deceased that caused her death. The benefit of that doubt should go to the appellant.”*

In a nutshell, there is doubt whether the deceased died as a result of burns or due to other causes.

In the end, I am convinced the prosecution have failed to make out a *prima facie* case. The case against the accused is dismissed for lack of evidence. The accused is ordered acquitted. Consequently she should be set free forthwith unless lawfully held.

*Dated and delivered at Nyeri this 9<sup>th</sup> day of July 2010.*

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Muguku for the Accused and Mr. Makura for the State.