



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE**

**Criminal Case 4 of 2007**

**REPUBLIC ..... PROSECUTOR.**

**VERSUS**

**ROSE NANDAKHO MIKAI ALIAS MAMA SHEILA.....ACCUSED.**

**R U L I N G.**

The accused herein, ROSE NANDAKHO MIKAI, alias MAMA SHEILA, is charged with the offence of murder contrary to sections 203 as read together with section 204 of the Penal Code.

The particulars are that on the 4<sup>th</sup> day of January, 2001 at Ex-Prison Farm Kitale Municipality, in Trans Nzoia District within the Rift Valley Province, jointly with others not before the court murdered Everline Naliaka Wafula.

The prosecution called seven (7) witnesses in support of its case.

*PW1, Evans Kiliswa Wanyonyi*, the village elder of Tumaini testified that the deceased and the accused were staying in one housing block and were next-door neighbours. The husband of the deceased was the caretaker of the premises.

The premises comprised of one block with three rooms. On the one hand, the deceased was occupying one-bedroom with her family which comprised of her children and her husband. On the other hand the accused was occupying one bedroom adjacent to that of the deceased. The compound housing the building was fenced with a barbed wire. No evidence was adduced as to the existence of a gate.

It is the deceased who assisted the accused to get the one room as a tenant. From the commencement of their stay the deceased and accused enjoyed good relations.

However, in the course of their stay, there developed bad blood. The deceased complaint was that she was staying with small children some of whom were girls, yet the accused was bringing men in her room. Irked by the accused bad habits, the deceased then complained to the village elder who inturn ordered the accused to leave. The accused vacated the premises after one week on a Saturday. She left a bed and undertook to come back for it later. The reason advanced was that she lacked the spanner to unscrew the bolt.

Four days later, while asleep at his home at about 11.00 p.m., he heard screams but would not locate where the screams were emanating from. Thirty minutes later he again heard screams. He woke up. Soon thereafter a group of people who introduced themselves as neighbours of the deceased came to

report that the deceased had been murdered at her residence. The group comprised *inter-alia* of Alfred Wafula (PW6). He accompanied this group to the scene and saw the mutilated body of the deceased.

Alfred Wafula (PW6) narrated to him how the accused called the deceased and asked for keys of the room previously occupied by her (accused) so that she could take her bed.

As the deceased took the keys to the accused, Alfred Wafula (PW6) went outside to the toilet. Immediately, he entered the toilet somebody locked him from outside using tar-bolt. The next thing he heard were screams of the deceased pleading for her life.

After listening to Alfred Wafula (PW6) he rang the chief of Kitale Municipality who in turn rang the police. Scenes of crime personnel took the photographs. He then took the police where the accused had kept some of her belongings. It happened to be the home of Charles Aseneke. The accused was then arrested. She was sleeping on a mattress on the floor in the company of a young girl and a boy.

Cross-examined by Mrs. Kibe for the defence PW1 replied thus:-

*“.....Alfred told me that the accused had left*

*behind a bed which she was unable to unscrew because the boda-boda transporters had no spanner to unscrew the bolts .....*”

*PW2: NO. 54303 Inspector Daniel Kariuki, was instructed by Chief Inspector Halima Mohammed on phone to proceed to the scene of crime. On the way, his entourage met a group of people which comprised of Edward Kilisia Wanyonyi (PW1)*

At the scene they viewed the mutilated body of the deceased. They took the body to the mortuary and proceeded to look for the accused who was a suspect.

A little while later they, found the accused sleeping in a room in the house of Charles Aseneka. The room had 2 other occupants – a girl and a boy. The Aseneka and the occupants of the room confirmed to him that the accused had not left the house since 7.30 p.m. that night.

The accused was then arrested and taken to the police station. The husband Alfred Wafula (PW6) was equally arrested but later on released after interrogation.

Cross-examined by the defence counsel he testified that the police arrested Wafula (PW6) by reason of the fact that they were not satisfied with the explanation that he (Wafula) –had been locked inside the toilet while the deceased was being killed. Moreso, in the light of the fact that the tar-bolt was inside the toilet door as opposed to outside. Anybody locking the toilet would have locked from inside. That would have been Alfred Wafula (PW6) himself. For that reason he became a suspect.

*PW3, Sabina Maina, is the caretaker of the house where both the deceased and accused were staying at the time of the incident. She confirmed that both the accused and deceased were her tenants.*

She corroborated the evidence of Evans Kiliswa Wanyonyi (PW1) that at the prompting of the deceased he wrote a quit notice to the accused. That upon receiving the notice the accused moved out of the premises but left a bed.

*PW4, Jacqueline Nafula Wafula, is the daughter to the deceased and Alfred Wafula (PW6). She recalled that on 9<sup>th</sup> January, 2002 at about 11.00 a.m. she was asleep in the same room with her father, mother and other siblings. The room was divided by a cloth acting as a curtain. In that state, she heard the voice of the accused calling her mother to bring the keys so that she could take the bed she had left in a room previously occupied by her. Moments later he heard the deceased crying. She was saying that Mama Sheilla had killed her. He then woke up his father and informed him that her mother was under attack. Her father woke up and traced her mother behind the toilet. That the door to the room where the family*

was sleeping was locked from outside by somebody she did not know.

She further testified that it is her father who opened the door that enabled her to go outside where the mutilated body of her mother was. She did not see the accused at the scene though.

*PW5, Caroline Mutenyo Aseneka*, wife to Aseneka, who housed the accused, on the fateful night testified that on 9<sup>th</sup> January, 2001 about 7.30 p.m. she was in her house when the accused came with a small child. She wanted to leave at about 11.00 p.m., for the place where she had kept her things, but her husband, since deceased, restrained her. The couple organized for her a place to sleep in one of their bedrooms. The accused slept in the said room with a visitors of the Aseneka's – a girl studying at Sirende Secondary School and a small boy. The house had one exit door. The only other door was permanently locked. It was infact bolted from inside. Anyone who wanted to open the door could only do so from inside. The couple slept about 11.00 pm. She did not hear anybody go outside the house. About 3.00 p.m. the police came to arrest the accused on allegations that she was seen at the scene of murder of the deceased.

*PW6, Alfred Wafula Wanyonyi*, the husband of the deceased testified that he had been given one free room by Sabina Maina (*PW3*). It was a good gesture since he was building a house for Sabina. The house had 2 rooms. The other room was occupied by the accused from June, 2001.

The accused was paying rent of Ksh. 300 to the caretaker. At first they enjoyed good relations. Later it became sour. The accused used to bring men in her room. The deceased was of the view that this would influence her young children to be of bad behaviour.

On 3<sup>rd</sup> December, 2001 the deceased and the accused had a quarrel which degenerated into a fight. The incident was reported to Sabina (*PW3*) who told the deceased to report the same to village elder. The village elder in turn issued a letter to the accused to vacate the premises. The village elder (*PW1*) served it personally on the accused on 25<sup>th</sup> December, 2001. The accused vacated the premises after one week. She ferried her property piecemeal. By 9<sup>th</sup> January, 2002 only her bed was remaining. The village elder (*PW1*) locked the door of the room but gave the keys to the Wafula's (*PW6*) for safekeeping.

On 9<sup>th</sup> January, 2001, he did not go to work. He slept at 7.00 p.m. About 11.00 p.m his daughter Jacqueline Nafula (*PW4*) woke him up. She informed him that Mama Sheilla (accused) called the deceased. A moment later she heard her mother crying that Mama Sheilla (accused) was killing her. He went outside the room where the family were occupying and found the body behind the toilet. While still engrossed on the injuries on the body, two people confronted him. He ran and hide and bolted the toilet door from inside as these people had threatened to cut him. When he heard them moving away he came out of the toilet and saw the accused and two other people running into the forest 15 meters from the scene. He saw all this with the aid of a torch. There was also moonlight. Visibility was therefore not a problem.

It was his further evidence, that when she came out of the toilet, he returned back to the house. At that point in time his daughter Jacqueline Nafula (*PW5*) was inside the house. That the door was left ajar when he went outside the room for the first time, just before the deceased was hacked to death. He fell down and became unconscious. He ran inside the toilet, because two assailants wanted to cut him also with a panga. He shown the lights at the assailants. In those circumstances he saw the accused from the back. He recognized the accused by her clothes which he knew.

*PW7, Dr. Joel Muriro*, MOH Kitale District Hospital produced post-mortem report on behalf of Dr. Mungai under section 33 as read together with section 77 of the Evidence Act. The post-mortem report in respect of the deceased was tendered in evidence as Exhibit 2. It confirmed the fact of death and the causes - severe hemorrhage arising from severe head injury by a sharp object.

At the end of the evidence of the seven witnesses the prosecution closed its case.

At this stage the issue is to determine whether a *prima facie* case has been established by the prosecution to warrant the accused being put on her defence.

A *prima facie* case was defined in *RAMANLAL BHATT VS. REPUBLIC* (1957) EA. 332. as one in which a reasonable tribunal directing its mind to the law and the evidence would convict if no explanation is given.

Applying the said principle to this case, it is clear to me that only two people are capable of unraveling, the mystery of the death of the deceased.

One, the husband, Alfred Wafula (PW6), Wafula was a suspect in the case. He was held by the police for sometime but later released. That aside, Alfred Wafula's (PW6) evidence is that he went to the toilet contemporaneous with the deceased going to open the door of the premises formerly occupied by the accused. This was with a view to enabling the accused to take her bed which had remained thereat. That while in the toilet somebody locked the door from outside using a tar bolt. His evidence is contradicted by the evidence of his daughter, Jacqueline Nafula (PW4) who testified that she woke up her father when she heard her mother crying that mama Sheilla was killing her. While Alfred Wafula (PW6) says he was locked from outside the toilet, Inspector Daniel Kariuki (PW2) who visited the scene so soon after the episode says the door to the toilet was lockable from inside as opposed to outside. That was equally, a contradiction.

Most significant is the evidence of Caroline Mutenyu Aseneka (PW5) who testified that on 9<sup>th</sup> January, 2001 about 7.30 p.m. she was at her rented house within Kitale when the accused carrying a baby came to their residence. She prepared a meal for her and a visitor – a secondary school girl at Sirende Secondary School. About 11.00 p.m. the accused wanted to leave but her husband, since deceased, restrained her as it was too late. The couple then arranged for the accused to sleep together with the girl aforesaid and a small boy in their only spare bed-room. Their house, on the evidence, constituted of 2 bedrooms and was served with only one door locked from inside. Caroline Mutenyu Aseneka (PW5) did not hear any of their visitors, which included the accused, venture outside the house that night. About 3.00 pm the police came and arrested the accused on allegations that she had been seen in the neighbourhood where the deceased was found murdered.

It is a question of believing Alfred Wafula (PW6) and his daughter Nafula (PW4) or Caroline Mutenyu Aseneka (PW5). I believe the evidence of Aseneka (PW5). She appeared to me to be a witness of truth. On the basis of her evidence, I find and hold that the accused was never at the scene of the murder. She was at the house of Caroline Mutenyu Aseneka (PW5). She could not have participated in the murder of the deceased. She never even went to this premises where the deceased was murdered. I discount the evidence of Jacqueline Nafula (PW4) and Alfred Wafula (PW6) regarding the presence of this accused at the scene of crime. In passing, I dare mention that the accused could have conspired to have the deceased eliminated but there is no evidence of that conspiracy before me. I have nothing to found a conviction on.

Accordingly, I return a verdict of NOT GUILTY. I acquit the accused person of the offence of murder under section 306 (1) of the Criminal Procedure Code. The accused, is accordingly set free unless lawfully held for some other lawful reason. It is so ordered.

Dated and delivered at Kitale this 18<sup>th</sup> day of March, 2009.

**N.R.O. OMBIJA.**

**JUDGE.**

Mr. Mutuku for State.

Mrs. Kibe for Accused.