



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE 41 OF 2007**

**REPUBLIC ..... PROSECUTOR**

**Versu**

**CHARITY WAMITI WAWERU**

**...ACCUSED**

**JUDGMENT**

The accused **CHARITY WAMITI WAWERU** was charged with *murder contrary to Section 203 as read with Section 204 of the Penal Code*. The particulars of that offence were:-

**“CHARITY WAMITI WAWERU: On the 13<sup>th</sup> day of April 2007 at Mbiri Village in Kirinyaga District within Central Province murdered FRANCIS WAWERU GATHIMBA.”**

The deceased was the husband of the accused. PW 2 said that on 13<sup>th</sup> April 2007 he was at his home, Mbiri Village in Kirinyaga District. At 8.30 to 9.00 a.m. he was getting fodder for the cows in the farm. He heard some screams coming from his home. He had left his mother, the accused, and his father the deceased at the house. He recalled that he had noted signs of what he called “*my mother’s illness*”, two days prior. Because he also knew of her condition he rushed home. As he went he thought “it was my mother who developed the problem.” When he reached home he found many people there. Some were holding his mother. They told him that his father had been stabbed. He was shocked to find his father soaked in blood. He sent for his sister and brother. They arrived after a short while in a car. Due to the injuries on his father and because the accused was ‘sick’ they took both to hospital. His father died the following day. He said that the accused prior to that incident had been ‘sick’ and he intended to call his sister so that they could take her to hospital. She had been under medication. When he left for the farm that morning he had left the accused in the kitchen making tea. The deceased had felt unwell that day and he had not come out of bed. The place where he went to get fodder was about 100 feet away from the house. He had been gone for 30 minutes before he heard screams. On cross examination he said that the accused suffered from episodes of mental illness. In the year 2004 accused developed blood pressure condition and suffered from meningitis. That when she gets the episodes of mental illness the accused gets tearful but she would not trouble any one. He said that when he responded to the screams he found the accused held by 5 people and that she was looking confused. At that point she was not violent. On being taken to hospital she was admitted for one month. On being discharged, he talked to her and she could not recall the incident. When however she saw deceased tomb and she was told it was her

husband's tomb she began to cry. PW 1 said that the accused was her mother while the deceased was her father. On 13<sup>th</sup> April 2007 while at her home, which is not far from her parent's home, at about 9.00 a.m. she was called by her sister Anne Wanjohi. She was told that their father was injured. When she went to her parent's home she found deceased bleeding. Then she said:-

***“My mother was out of her mind and she was locked in the house.”***

She and her husband looked for a motorvehicle which they used to take her mother and father to Embu General Hospital. Her father died the following day. She confirmed that she was present when the postmortem was carried out on her father and that it was her who identified the body. That the accused had mental illness for a long time. She used to taken medicine for her blood pressure and for the mental condition. She further stated:-

***“When she is sick she is totally mad.”***

That they had been taking her to clinic for that condition and when she would be too unwell she would be admitted. That she suffered with mental illness for a long time but that condition deteriorated when she development blood pressure. That prior to that incident the accused and deceased were relating well since there was no child they were looking after. That the deceased would assist accused when she would suffer those episodes of mental illness. He would hold her until other people would come to help him. That the accused when she was well, would in turn help the deceased to take his medication for his chest condition. On being cross examined this witness said that accused was arrested after two weeks of discharge from hospital. That on the fateful day she found her mother locked in the kitchen because she wanted to run away saying that there were people who wanted to kill her. She also talked about someone who wanted to get her reflection with a mirror. This witness said she had witnessed such scenes before and what she would do would be to ask people to hold the accused until she cooled down to enable her to take her to the hospital. On that fateful the moment she was taken to hospital she was sedated. She 'cooled' down and she slept. The witness finally said that according to her estimation the accused was 'not in charge' of her faculties. That she was behaving the same way she behaved when she had those episodes. PW 3 was called by his wife while he was at work. He was summoned at his father-in-law's house. He found his father in law had been injured. He got a vehicle which took his parents in law to hospital. He confirmed that accused had periodical mental illness. That when she suffered with mental illness she was usually admitted in hospital. PW 4 was a psychiatrist attached to Provincial General Hospital Nyeri. He had been in practice as a psychiatrist since 1995. He first was posted to Mathare Hospital Nairobi and Provincial General Hospital Nyanza before being posted to Nyeri. He said that he had prepared a medical report on the accused dated 14<sup>th</sup> November 2007. That report was in following terms in part:-

***“Charity has been mentally unstable for more than 20 years. It has been characterized by self-neglect, vagrancy, sleeplessness, hearing threatening voices and seeing “unseen people”. Further that she has frequently armed herself with a panga threatening to kill people at home and also kill herself. She has also been noted to eat garbage. Her two brothers (deceased) suffered mental illness. Opinion Charity suffers chronic mental illness (SCHIZOPHRENIA) and is unfit to plead. She requires continuous medication to maintain some normalcy.”***

The doctor continued to say that accused had been receiving treatment at Embu Hospital both for hypertension and psychotic illness. He got information from the family that she had received treatment for mental illness for 20 years but that she had failed to adhere to her medication regime which caused on and off agitation Doctor Owino put accused on medication and she seemed to stabilize. He finally made a report to the court dated 10<sup>th</sup> July 2008 as follows:-

***“This is to notify you that the above named who was committed to psychiatric treatment is now fit to plea.”***

On cross examination he said that accused had suffered with bouts of mental illness due to her failure to adhere to medication. He said that on 13<sup>th</sup> April 2007 accused could have lost her sanity. PW 5 was

Doctor Mercy Wanjiku Ndirangu who works at Embu Provincial General Hospital. She had been a medical officer for 19 years. Referring to postmortem report prepared by Doctor Abuya. The body was of Francis Waweru. The body had multiple cuts on the head, the arm and skull were fractured. The fracture on the head was in two places, on the top and the side of the head. The report concluded by stating that death was due to the head injury. Prosecution closed its case. The court found the accused had a case to answer and on being put to her defence the accused chose not call any evidence.

I have considered the prosecution's evidence and I find that the evidence is clear and undoubtedly points to the fact that the accused committed the murder. The evidence PW 2, the first family member on the scene is clear. I am satisfied that the accused committed the murder. Accused was said to have suffered from mental illness for 20 years. PW 1 and PW 2 stated that she suffered with episodes of mental illness she needed to be restrained until she was medicated. Prior to the fateful day PW 2 had noted the accused displaying characteristics which were an indication that she was likely to suffer an episode of mental illness. He intended to inform his sister so that they could arrange to take her to hospital. On that fateful day 13<sup>th</sup> April 2007, on arriving at home he found that accused had been restrained by being locked in the kitchen. Even when they got her out with a view to take her to hospital, the accused they described her as being mad. She had to be sedated when they arrived at the hospital. Doctor Owino the psychiatrist confirmed that accused when not medicated suffered from mental illness. The state of accused on 13<sup>th</sup> April 2007 leads this court to find that although she committed the murder she was however insane when she committed the offence. The learned counsel Mr. Karweru for the accused person in his submissions stated that there was sufficient evidence that the accused person had carried out an illegal act. He said the evidence was strong enough to show that she killed the deceased. In using the word kill he attempted to distinguish it from the word murder. He argued that the state had not proved that the accused had a guilty mind when she carried out the act of killing the deceased. In his view the accused persons mind was such as to call upon the M'Naghten Rules. The M'Naghten case of (1843) Lord Diplock in the House of Lords stated thus:-

***“There was ample evidence that the defendant was acting unconsciously and involuntarily when he inflicted injury, but cause of his condition was psychomotor epilepsy. Where the effect of a disease was so to impair the mental faculties of reason, memory and understanding that the sufferer did not know the nature and quality of his act or, if he did, did not know he was doing what was wrong, it was ‘disease of the mind’ with the meaning of the Mc’Naghten’s Case (1843) 10 CI & Fin 200, even if the effect was transient or intermittent. On the evidence the defendant was therefore ‘insane’ at the time of his act and the only possible verdict was that provided for by the Act of 1883 as amended.”***

The law in Kenya clearly provides how the court should deal with the case such as the one of the accused person. As stated before the clear evidence brought before court was that the accused was suffering from mental illness at the time she committed the act against the deceased. Having made the finding of that fact as per Section 166(2) of the Criminal Procedure Code this court does find the accused guilty but was insane. Accordingly this court shall report this case for the order of the president. In the mean while I order that the accused be detained in custody.

**MARY KASANGO**

**JUDGE**

***Dated and delivered this 11<sup>th</sup> day of May 2009.***

**M.S.A MAKHANDIA**

**JUDGE**