



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CRIMINAL CASE 65 OF 2005**

**REPUBLIC**

**-VS-**

**CHARLES MWANGI KARUME**

**JUDGEMENT**

The accused has been charged for the offence of Murder, contrary to Sec. 203 as read with Sec. 204 of the Penal Code, Cap. 63, Laws of Kenya. The particulars of the offence as stated in the information are as follows:

***“On the night of 8<sup>th</sup> and 9<sup>th</sup> April, 2005 at Congo Village in Kasarani Division within Nairobi Area Province, murdered EVERLYNE NDITI MUYU”.***

In her evidence ***PW1 Priscilla Mukami Musyoki*** testified that she is a business woman selling curios in Mombasa. She recalled that in February 2004, she came to Kahawa West Nairobi to visit her daughter namely Everlyne Nditi Muya who introduced her to the accused as her boyfriend. After the deceased cooked, they later ate with the accused before he left. Thereafter, PW1 made four to five other trips and she was able to see the accused while in Nairobi. According to PW1, when she came to visit her daughter in December 2004, she informed her that she could not continue her friendship with the accused as she was not ready for marriage and wanted to go overseas for studies. She further explained that at the age of 22 years she was not ready to marry as suggested by the accused. By the time that PW1 left for Mombasa she was aware that their friendship had broken. When PW1 came back to Nairobi in 2005, the accused went to her daughter’s house and told her that he was ready to wait till her daughter returned from abroad. However, the deceased told the accused that she could not continue with the friendship and advised him to look for another girlfriend to marry. After PW1 left for Mombasa, the deceased rang her on several occasions and told her that her friendship with the accused was over. On 8<sup>th</sup> of April 2005, PW1 came to visit her daughter only to find that her house had got completely burnt. She was later told that her daughter had been taken to Kiambu District Hospital. On arrival there, she found her daughter with her landlady and neighbours. The daughter explained that the accused had visited her at around 4pm when she was seated outside with the landlady. Thereafter the accused started caressing her and saying the following words “*you are still mine. I love you ....*” At that stage, the landlady asked the accused who was carrying a ten litre jerry can to leave. After he left, the house of the deceased got burnt on the same night. The daughter explained that she only woke up and found the house burning. Apart from the above, PW1 also testified that on 13<sup>th</sup> of April, 2005, she went to Kenyatta Hospital Mortuary where she

identified the body of her daughter before a post-mortem was carried out by Dr. Njue. Eventually the body was released to the family for burial. On the other hand, **PW2 Christopher Otieno Ocholla** stated that on the 8<sup>th</sup> and 9<sup>th</sup> April 2005 at around midnight, while he was in his house, he heard a lot of noise and when he opened the door he saw fire burning the neighbour's house. On going to Eva's (the deceased) house he found her running all over the place while her body was on fire. PW2 later explained that they then poured water over her body before putting off the fire in her house. Later they organized transport to take Eva to the hospital. PW2 also explained that earlier they recovered a black jerry can exhibit 1 next to the house of the deceased. The said jerry can was smelling petrol. On her part, **PW3 Nancy Wangari** testified that during the material night, as she was asleep she heard cries and screams. On waking up, PW3 later helped neighbours to put off the fire that was burning the deceased who was complaining that she was dying. PW3 recalled that on 8<sup>th</sup> April 2005, at around 4pm while she was seated outside her house, she saw the accused who was carrying a ten litre jerry can exhibit 1. On asking the accused, he replied that he was going to buy paraffin. PW3 also recalled that an agitated accused had declared his love to the deceased who never responded. In her evidence **PW4 PC Rajab Wanga** testified that on 9<sup>th</sup> of April 2005, at around 2.45 am, while he was on patrol duties with PC Simon Ngare, they met the accused before they introduced themselves as police officers. Though they ordered the accused to stop, he instead ran away and they had to chase him before they arrested him. On conducting a quick search, they recovered a knife and a torch exhibit 2 and 3 respectively. Thereafter, PW4 and his colleague arrested the accused whom they took to the police post where they charged him with the offence of preparation to commit a felony. In his evidence, PW5 PC Simon Ngari confirmed and corroborated the evidence of PW4 in details. Apart from the above, he also testified that apart from exhibit 2 and 3, they also recovered a padlock tri-cycle – exhibit 4, a pair of keys and two jerry can lids exhibit 6. That apart, **PW6 Corporal Rachael Wambui** testified that on 9<sup>th</sup> of April 2005 while she was attached to Kiamumbi Police Station she received a report from members of public that there was a house that had been burnt at 3 am and that there was somebody trapped inside. After recording the report in the OB, PW6 proceeded to Kiambu District Hospital where she saw the victim who had been admitted in serious condition. According to PW6, the deceased told her that the house got on fire while she was asleep. Further to the above, the deceased suspected that her boyfriend who is now the accused may have thrown an object through the window as they had differed following her plans to go abroad for further studies. Subsequently, PW6 produced a dying declaration exhibit 7. On the other hand, **PW7 Grace Nyakio Njenga** who is an analyst with the Government Chemist recalled that on 3<sup>rd</sup> of April, 2005, she received the following exhibits from CPL Rachael Wambui:

- Khaki envelope containing two plastic corks and a ten litre black jerry can

On examining the black jerry can, PW7 found that the same contained diesel which is a flammable petroleum product. **PW8 Walter Kagundu** introduced himself as the investigating officer who produced the post mortem form – exhibit 9.

In his defence, the accused denied at length, committing the offence for which he has been charged of. Apart from the above, the accused went to great length to explain how he had been framed by PC Ngari who was based at Maziwa Police Post. According to the accused, the said officer had a grudge against him after they differed over some corrupt deals that have nothing to do with this case. The accused also called two witnesses who supported his case. DW2 confirmed that the accused was the complainant in Makadara CM Case No. 8383 of 2004 that was filed on 13<sup>th</sup> April, 2004.

After the summing-up was delivered, all the three assessors unanimously returned a verdict of “Not Guilty” against the accused. The assessors stated *inter alia*, - that the exhibits were different and that there was no quarrel between the accused and deceased – that the evidence of the burning of the house was hearsay – and that the evidence of the arresting officers was contradicted by that of DW3.

From the evidence on record, it is apparent that none of the prosecution witnesses actually saw the accused burning the house that was occupied by the deceased. That means that there was no direct evidence to connect the accused to the offence. Though the prosecution relied heavily on circumstantial evidence, the same was not water-tight and conclusive. PW6 Cpl Wambui conceded that the deceased

only suspected the accused to have been behind the offence. The dying declaration itself – Ex. 6 does not put the accused at the scene nor implicate him. The fact that the accused was found in possession of a jerrycan is not conclusive that the accused committed the offence.

In the case of *Sawe v. Republic* East Africa Law Reports [2003] 1 EA, the court stated inter alia,

***“In our judgment, the evidence does not satisfy the legal requirements of circumstantial evidence to warrant or justify the conviction of the Appellant on the basis of the evidence on the record. We are, therefore, unable to uphold the conviction entered by the Learned trial Judge. We have evaluated the evidence as we are entitled to at great length and there is really nothing left to connect the Appellant with the death of the deceased except mere suspicion. The suspicion may be strong but this is a game with clear and settled rules of engagement. The prosecution must prove the case against the accused beyond any reasonable doubt. As this court made clear in the case of Gichira v. Republic [1998] LLR 1185 (CAK) suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence. We disagree with the Learned Judge’s view that the prosecution had proved its case against the Appellant beyond any reasonable doubt.*”**

In this case, though there are strong suspicions against the accused, that cannot be a basis for conviction. No doubt, the accused had differed with the deceased who was wise enough **not** to be married prematurely. However, the investigations and evidence failed to prove that he actually committed the offence. Though the accused seems to be crafty and cunning, there was no direct or forensic evidence to pin him down.

Under the above circumstances, the defence of the accused seems reasonable and plausible. The upshot is that the prosecution has failed to prove their case beyond any reasonable doubt. On that note, I do concur with the assessors on their unanimous verdict. In conclusion, I hereby find the accused “Not Guilty” of the offence of murder, contrary to Sec. 203 as read with Sec. 204 of the Penal Code, Cap 63, Laws of Kenya. The accused should be released forthwith unless held lawfully. Those are the orders of the court.

**MUGA APONDI**

**JUDGE**

Judgment read, signed and delivered in open court in the presence of the accused:

**OMONDI TUNYA** .....Defence Counsel

**MS. MWANZA** .....State Counsel

**MUGA APONDI**

**JUDGE**

**29<sup>TH</sup> JULY, 2009**