



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 5 of 2007

REPUBLICPROSECUTOR

VERSUS

JAMES NJOROGE KANGARA ALIAS MUTHUNGU.....ACCUSED

RULING

(On whether or not the accused has a case to answer)

On 16/1/2006, the accused **JAMES NJOROGE KANGARA** Alias **MUTHUNGU** was charged with the murder of **MARION NJERI KIBUBA** and **FRANCIS MAINA NJERI**.

The charge read that on 18/11/2006 **JAMES NJOROGE KANGARA** Alias **MUTHUNGU** murdered **MARION NJERI KIBUBA** and **FRANCIS MAINA NJERI** at Kiambaa Village, Kiambu, within Central Province contrary to Section 203 as read with Section 204 of the Penal Code, Cap. 63 Laws of Kenya.

In the course of the hearing, which span between 23/5/2007 and 13/12/07, the Prosecution called eight (8) witnesses who testified in the court.

I have carefully gone through and evaluated the massive evidence adduced in light of the information, and I have reached the following findings and conclusions.

Under Section 203 of Cap. 63, Laws of Kenya, a person commits murder if with malice aforethought causes the death of another person by an unlawful act or omission.

Needless to amplify, for the crime of murder, like any other crime, to be proved against an accused person, the prosecution must prove not only that the accused unlawfully killed the deceased, but also that such killing was pre-meditated or intentional. The two cardinal ingredients of the offence of murder are **mens rea** and **actus reus**.

It is further the law that the prosecution must prove each of the above ingredients of the offence beyond any reasonable doubt.

From the evidence adduced by the prosecution, all that has been shown is that **MARION NJERI KIBUBA** and **FRANCIS MAINA NJERI** were killed and their remains found in the Room where Njeri and her son resided. There is no evidence that anybody witnessed the incident. None of the witnesses who testified mentioned seeing the accused killing the two deceased persons or any one of the deceased.

Put differently, there is no evidence linking the accused to the killing or death of the two. All that

came out of the evidence is that the accused and Njeri lived together either as married couple or as man and girl friend, with Njeri's son, Francis Maina Njeri in the same House. Beyond that, there is no evidence to link the accused to the alleged murder.

As a matter of fact, the evidence does not clearly show when the two died, nor their cause of death. The pathologist – P.W. 8 – Dr. Jane Wasike Simiyu stated, in her Report and verbal testimony that the bodies were so decomposed that the **cause of death was undetermined**. Thus, no evidence as to how the two met their death.

I need not dwell on the lack of evidence on the motive for the killing, even if the cause of death had been shown to link the accused to the offence.

All in all, and in light of the foregoing, I find and conclude that the prosecution has failed to prove its case of murder against the accused. Accordingly, there is no evidence upon which to put the accused on his defence.

I therefore order the immediate release of the accused, unless he is otherwise lawfully held.

It is so ordered.

DATED and delivered in Nairobi, this 28th Day of January, 2008.

O.K. MUTUNGI

JUDGE