



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

Criminal Case 142 of 2003

REPUBLIC.PROSECUTOR

VERSUS

PAMELA KARIMI.....ACCUSED

JUDGMENT OF THE COURT

1. The enactment and operationalisation of the STATUTE LAW (Miscellaneous Amendments) ACT 2007 abolished the role of assessors in murder trials with effect from 15.10.2007
2. As a result thereof, I have decided that there will be no summing up in this case hence this judgment. I believe that no prejudice shall be suffered by the accused as a result of this decision. The assessors who have sat with me during the trial are forthwith discharged. They are however entitled to payment of attendance allowances incurred to date.
3. The accused herein PAMELA KARIMI is charged with murder contrary to section 203 as read with section 204 of the penal code. It is alleged that she murdered one ELIAS MUTIRIA RUGIA on 1.6.2003, at Kaare village of Kaare sub-location in Meru south district. She denied the offence.
4. The prosecution's case is that the accused person was the last person to be seen with the deceased on the fateful day and that it was only the accused who could explain the deceased's whereabouts after the two had left their house together on the day the deceased who were wife and husband left their house in the small hours of the morning of 1.6.2003 on a journey. The deceased was carrying the accused on a bicycle. Some 3 or so hours later, the accused returned home alone and pushing the bicycle. Later, the deceased's mutilated body was found in the bushes near the spot where the accused said they had run over a snake and fallen down. After investigations into the matter, the accused was arrested and charged with murdering the deceased.
5. The prosecution called 10 witnesses. Pw1 was **Daniel Kabete Rugia**, a brother to the deceased person. His evidence was that he was the one who identified the body of the deceased to the doctor (pw10) for postmortem examination at the Chuka hospital mortuary on the 9.6.2003
6. PW2 was **Bessie Gacheri (Bessy)**, an intelligent 13-year-old daughter of the accused herein. She said that while her father, the deceased worked as a tailor at the local Kaaria market where the whole family lived, the accused was a housewife. She recalled that on the evening of 30.5.2003, she was at home with the accused, her sisters PURITY MUTHONI and EMILY KENDI when at about 8.00pm, one MUNENE visited them and was given some Ksh. 700/= by the accused but PW2 could not say why Munene was given the money. She also that her father came home at about 9.00pm and that at 5.00am, the following morning she was woken up by the accused and informed that accused and deceased were going to Keeria market to get some money. She stated that the two left riding a bicycle which the witness identified in court (MFI-1).

7. Bessy stated further that at about 5.00pm, on 1.6.2003, the accused returned home crying and informed her (PW2) through the neighbours KAWIRA AND MUKWANJERU that the deceased had died. That later evening at about 8.00pm, the police came to the home carrying the deceased's body in a police car. She later recorded a statement with the police. She also testified that before the deceased died, the accused and the deceased did not like each other very much.
8. During cross-examination, Bessy stated that though she had recorded in her statement that the accused returned at about 7.00pm on 1.6.2003, the truth was that the accused returned home at about 5.30am. Bessy categorically stated that when Munene came to their home at about 8.00pm, on 30.5.2003, the accused gave him Kshs.700/= comprising 7 one hundred shillings notes. It is to be noted that the witnesses was not certain about whether the accused returned home at 7.00am or whether it was 5.00pm or 8.00pm on 1.6.2003. Bessy also testified that when the accused returned home at about 7.00am on 1.6.2003, she Bessy sought to know why the accused had come back alone and that the accused informed her that the (accused) had returned home on the deceased's instructions.
9. PW3 was **Bernard Murangiri Nbudi (Bernard)**. He stated that early on the morning of 1.6.2003, while he was heading to Kiigene area, he met with the accused person at about 5.20am who informed him that she was returning home after she and her husband fallen off the bicycle (MFI-1) which the accused was pushing and that the accused informed him that the deceased had asked her to return home with the bicycle. That the accused also alleged that the bicycle was spoilt.
10. Bernard stated further that at about 6.00am, he went to the shamba of Kinyua Magiri (PW6) and while there, he noticed a trail leading into PW5 shamba. He also said he then went back to his home, and that about 3.00pm, he learnt of the death of deceased. Bernard said he was one of the people who went to Magiri's shamba where the deceased's body was lying on its back; and that the deceased's shirt was tied his (deceased's) neck.
11. PW4 was **Gladys Kanyua** who told the court that at about 9.00am, she went to her shamba to harvest maize but when she got there she noticed two things:- first, that someone had harvested some of her maize and two that there was a trail of blood leading to the nearby bush. That on noticing the trail of blood she called two other people, a lady by the name MUKWANDEKE and a man KINYUA MAGIRI (pw6) and that together, they noticed that the blood trail was in Magiri's shamba. She said they reported the matter to the local sub-area who joined them and later they found the body of the deceased. That the sub-area later reported the matter to the police
12. PW5 was **Daniel Munene** but the witness later turned hostile and his evidence was thus of no value to the prosecution's case. This is the man whom Bessy went to their home at about 8.00pm on 30.5.2003 and was given Ksh 700/= by the accused.
13. PW6 was **Kinyua Magiri (Magiri)**. He told the court that on 1.6.2003 at about 8.00am, PW4 went to his home and informed him about the trail of blood in his (PW6's) shamba; and that after he got the information he accompanied PW4 and MUKWANDEKE (not called as a witness) to the shamba, together with the local sub-area, one TIMOTHY MUTHOMI (not called as witness). He said that they found the body of the deceased's body was lying on its back, had no shoes on and that the face was covered with a blue coat which also matched the color of trouser.
14. Magiri also stated that they saw the body after the sub-area had come. He also stated that at some point, which he could not pinpoint and before the police came to the scene the deceased's body was moved some 20 metres away from where it originally laid, but he could not say who moved the body. He said further that while they waited for the police, he and other members of the public remained on the road which was about 50-60 metres away from where he had first seen the body of the deceased
15. PW7 was **Marangu Mbwiria (Marangu)** a businessman from Kaari. He stated that at about 4.00pm on 1.6.2003, he learnt about the deceased's death. He also said he went to Magiri's shamba and saw the body and later went to the deceased's home. He testified further that at about 8.00pm, police went to the deceased's home and arrested the accused. He also stated that when he saw the deceased's body in the bush, the face was covered with a coat. It was also Marangu's testimony on the evening before the deceased died, he (deceased) had told Marangu that deceased would go to Keeria market together with his wife to look for money. When the witness was referred to his statement to the police concerning the discrepancy as to the source of his

information about the death of the deceased, he said that both the statement and the testimony to the court were correct.

16. PW8 was **Geoffrey Kithinji Ndubi** but his testimony was of little evidential value since he did not witness the killing of the deceased nor did he testify of any plausible circumstances surrounding the death of the deceased.
17. PW9 was number 60645 police constable **Abdalla Mwamleo Gakweri**. He testified that while he was on duty at Ntumu police station on 1.6.2003, he received a report concerning the death of the deceased and later proceeded to the scene where he observed the deceased's body that had several stab wounds on the head and a deep cut on the neck. PW9 said he collected the deceased's body from the scene and took it to Chuka District Hospital Mortuary. He also said he interviewed some witnesses including the accused who gave him the story of the snake and mechanical problems on the bicycle which the accused alleged forced the deceased to ask her to return home with the bicycle while he (deceased) proceeded to Keeria market.
18. PW9 stated further that after confirming that the bicycle had no mechanical defects, he arrested the accused and three men DANIEL MUNENE (PW5) JAMES GICHUNE and one NKUBA. PW9 said he attended the post mortem on the body of the deceased on 9.6.2003. He produced the p3 on the mental assessment of the accused as p exhibit 2. PW9 could not say why the other suspects: - Daniel Munene and James Gichunge were not charged alongside the accused
19. PW10 was **Dr. Nimrod Ngala Ngarama**. He took the court through the post mortem report as prepared and duly signed by Dr. Kiluva on 9.6.2003. According to the report produced as p exhibit 3, the deceased had a temporal cut measuring 3cm long with depressed skull fracture with bleeding in the brain; the left temporal mandible joint had a 2cm long cut with a stab wound next to the ear exposing the bone while the frontal area of the head had a cut and depression involving the brain. Dr. Ngala also told the court that from the report, the deceased also suffered a 6cm deep cut on the left side of the neck with bruising of the anterior trachea and back of the neck. Dr. Ngala also said that the deceased had injuries on the anterior chest wall and on the abdomen. In the doctor's opinion, the deceased died from severe head injury with associated excessive bleeding from the other injuries.
20. The accused gave a sworn testimony but called no witnesses. She stated that on 1.6.2003 she left home together with the deceased who was her husband at about 5.am for Keeria. She said that soon after they left home, they stumbled upon a snake and fell down with the bicycle- p exhibit 1. That after that incident during which both she and her husband fell down, the deceased asked her to return home taking the bicycle with her while he proceeded on the journey.
21. The accused also stated that at about 3.00pm, while she was at the market she heard that a person had been killed in the neighbourhood and at about 7.00pm, she was informed that the dead person was in fact her husband. She said she did not go to the scene where her husband's body lay but later she was arrested and charged with the offence. She testified further that before the death of the deceased, they lived peacefully as man and wife.
22. During further testimony on cross-examination, the accused told the court that they had gone for only about 150 metres from the home before they ran over the snake and according to what she said, the distance of 150 metres took them about 2 hours to cover from 5.00am to 7.00am. She also testified that after they fell down, she took about 2 hours to get back home. That as she was pushing the bicycle and that before she got home she met Bernard (PW3). She denied that she had paid pw5 any money on the eve of the deceased's death, though she admitted that pw5 had been to her shop on the evening before the deceased's death. The accused denied killing the deceased.
23. At the close of the hearing Mr. Mosota who appeared for the accused submitted that the prosecution had not proved its case beyond any reasonable doubt against the accused person as required by law. Mr. Mosota contended that there were irreconcilable contradictions in the prosecution's case, especially in the testimony given by PW2 who was unable to give the exact time when the accused returned home after she had left home with the deceased at about 5.00am on the fateful day.
24. Further, it was contended on behalf of the accused that though the prosecution alleged that the accused had lured the deceased to his death, it did not adduce evidence placing the accused at the scene of the crime, and further that though accused was alleged to have had extra martial relationships with PW5 and two other men the prosecution failed to prove such relationships and to prove a link between such relationships (if they ever existed) and the death of the deceased. Mr.

Mosota urged the court to find that the circumstantial evidence on record was too weak to prove the case against the accused person.

25. Finally, Mr. Mosota argued that the accused's constitutional right under section 77(3) of constitution had been flouted. The relevant section is 72(3). He said that though the accused was arrested on 1.6.2003, she was taken to court until some 3 clear months in between. Relying on two authorities: -

a. **Albanus M. Mutua- vs- Republic**

Cr. Appeal No. 120/2001 (court of appeal) at Nairobi and

b. **R. -Vs- Sebastiano Miriti- Meru HCCR Case No. 50 of 2006**

Mr. Mosota urged the court to acquit the accused for violation of her constitutional rights.

26. Mr. Muteti, principal state counsel did not agree with Mr. Mosota submissions. He submitted that the prosecution had proved its case beyond any reasonable doubt through the circumstantial evidence given by its witnesses. He contended that there was no doubt that the accused person had participated in the killing. Singling out the evidence given by PW2 (Bessy) and also pointing to the accused's own testimony, Mr. Muteti contended that these two pieces of evidence point to no other conclusion than that the accused lured the deceased to his death, though she returned home pretending that the deceased had voluntarily agreed to proceed to Keeria market alone after the alleged fall from the bicycle. Mr. Muteti dismissed the defence theory that the deceased had asked the accused to return home with the bicycle after the two allegedly ran over a snake fell down, and suffered some damage to the bicycle. Mr. Muteti further contended that the snake theory could not be true in light of the evidence given by PW3 (**Bernard**) who told the court that the only problem with the bicycle when he saw it being pushed by the accused was the dynamo whose impaired could not have hampered the use of the bicycle.

27. Further, Mr. Muteti contended that the time of 3 hours or thereabouts taken by the accused to cover a distance of 150 metres return was not only explained by the accused. He urged the court to draw the inference that the accused used the three hours to prepare and to murder the deceased, drag the body off the road and to conceal it in the nearby bushes, whether or not anyone saw her kill the deceased.

28. as regards the delay in arraigning the accused before court within the statutory time limit of 14 days, Mr. Muteti submitted that the two authorities cited by Mr. Mosota were distinguishable from this case on the ground that the delay in those authorities ran to 8 months as opposed to a mere 5 days in the present case. Further, Mr. Muteti submitted that the defence had simply ambushed the prosecution with the complaint about the delay.

29. There is no doubt that this case rests entirely on circumstantial evidence;- that on the material day he accused and the deceased left their home together between 5.00 and 5.30am or whereabouts on what the accused said was a mission to Keeria market to visit one KAREMBA who was said to be a friend of the deceased; that the trip to Keeria did not materialize and that some 3 or so hours after the couple had left their home. Later the same morning, the deceased's body was found laying in the bush some 50 -60 metres from the road. When found, the body had deep cuts on the head with a fractured skull, a deep cut on the neck that severed the trachea, multiple bruises on both sides of the chest and multiple bruises on the abdomen.

30. The question that is to be considered by the court is whether the circumstances as described above form a sequence of events leading to the conclusion that the inculpatory facts are inconsistent or "incompatible" with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt". (See **R. -V- Kipkering arap Koske & another (1949) 16 EACA 135**). The decision in the above case has been followed and applied in many similar cases among them **SAWE- VS- R (2003) KLR 364 AT 375** and **Boniface Owino Oloo – V- R CR. APPEAL No. 200 of 2005 (court of appeal at kisumu)- unreported**.

31. The principle governing the application of circumstantial evidence was stated in **R-Vs Taylor Weaver and Donovan (1928) 21 Cr. App. R 20** as follows: -

"Circumstantial evidence is very often best evidence. It is evidence of surrounding circumstances,

which by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial”

32. The issue that now arises for determination is whether the circumstances surrounding the death of the deceased form an unbroken chain, which directly points a finger at the accused as the one who murdered the deceased. After carefully considering all the evidence that has been placed before me, I am satisfied that there is no other conclusion I can reach than that the accused is guilty. According to the testimony given by Bessy, which testimony is confirmed by the accused's own testimony, the accused was the last person to be seen with the deceased as they left home together on 1.6.2003 at about 5.00am riding the bicycle on their way to Kerria Market. According to the testimony of Bernard, he met the accused at about 5.20 am pushing the bicycle and that the accused told Bernard that her husband had chosen to proceed to Keeria market alone after they had ran over a huge snake and fallen down, damaging the bicycle. According to Bernard the bicycle had no major problem, and PW9 also confirmed this position after he had carries out investigations.
33. There is further evidence showing that the same morning between 6.00am and 9.00am, the deceased's mutilated body was found in a bush close to where the accused said she and the deceased had ran over a snake. Although Mr. Mosota questioned the testimony of PW2 (Bessy) I am satisfied that her testimony cannot be faulted simply because she could not remember the exact time(s) when the accused returned home on that fateful morning. Bessy's undisputed evidence establishes that the accused person was the last person to be seen with the deceased and that being the case it is only the accused person who could, under the provisions of section 111(1) of the evidence act explain how and where she parted company with the deceased. This fact was only peculiarly within the knowledge of the accused. She of course tried to explain that the deceased had opted to proceed alone on the journey and asked that accused to return home after the unfortunate incident with the snake. I do not believe that explanation by the accused person; and this being the case, a rebuttable presumption arises that the accused knew under what circumstances the deceased died. This presumption of fact that this court is entitled to make under the provisions of section 119 of the evidence act.) **See James Mugambi Muchene- Vs – Republic- CRA No. 29 of 20002 at Nyeri).**
34. It is also noteworthy that the accused took more than two hours to make her journey back home after she allegedly parted company with the deceased, in addition to coining a story that the bicycle was too damaged to be used on that journey. The stories about the snake and the damaged bicycle were a convenient way of dealing with the issues of the unexplained disappearance of the deceased person. All these circumstances taken together have satisfied me of the guilt of the accused person. Further, I do not find any co-existing circumstances, which would weaken or destroy the inference I have made. In my view, the prosecution has discharged the burden cast upon it by the law of justifying the inference of guilt of the accused person.
35. It also came out from the evidence that even after the accused eventually “became aware” of the deceased's death, she had no interest in going to the scene where the body was found. Such lack of interest could only mean that the accused already knew how the deceased had died. I therefore have no doubt in my mind that the accused by herself and or together with others killed the deceased and dragged him to the bush where his body was found. Those who killed the deceased must have done so with precision. They lost no time and ensured that the body was safely tucked away in the bushes some 50 – 60 metres from the road before taking off.
36. Bessy, the accused's daughter also stated that on the previous evening, one Munene came to their home at about 8.00pm and was given some Ksh 700/= and that she wondered why the accused was giving Munene the money. She also said that the accused and the deceased did not enjoy a cordial marital relationship. This evidence cannot be ignored by the court when piecing together the circumstances leading to the death of the deceased.
37. I now turn to the second issue concerning the delay in arraigning the accused person before court. Mr. Mosota urged that the accused should be set free on the ground that her constitutional rights under section 72(3) of the constitution had been violated. While recognizing the law in the **Albanus M. Mutua case (above)** the court of appeal has since held that claims of rights violation should be raised early in the trial So as to afford reasonable opportunity to the prosecution to explain any delays (see **Eluid Njeru Nyaga – vs- r. Court of Appeal- Criminal Appeal No. 182**

of 2006(Nyeri) and Samuel Ndungu Kamau & another- vs- R (2007) EKLK- Court of Appeal at Nairobi.

38. In the present case, the complaint on violation of the accused's constitutional rights was not raised until the stage of final submissions. It is clear from the record that no other time during the trial did the defence raise this issue not even during the time when PW9 gave his testimony. I find and hold that the defence simply ambushed the prosecution with demand for an explanation and afforded them no opportunity to explain the same. I therefore reject the defence plea that the accused should be acquitted on this ground alone.

39. In this result, I find the accused guilty of the offence of murder and convict her accordingly. It is so ordered

40. Dated and delivered at Meru 18th this day of January 2008

RUTH N. SITATI

JUDGE