



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Criminal Case 3 of 2006**

**REPUBLIC.....PROS**

**VERSUS**

**BRIAN KARIUKI .....ACCUSED**

**JUDGMENT**

The accused, Brian Kariuki was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the night of 14<sup>th</sup> and 15<sup>th</sup> February 2006 at Gichiche village Runyenjes Town Location in Embu District murdered Lydia Igandu hereinafter called “deceased”. The prosecution proved the death by producing Exhibit No 3 being the post-mortem report showing the several injuries sustained by the deceased. The opinion of the Doctor was that death was caused by most probably Trauma- physical assault. The condition of the body is also shown in the photographs which were taken and are exhibited. There was evidence of Government Analyst based at Government Chemist Nairobi. He said he received from No. 66032 P.C Dickson Gitonga the following items:-

- (a) blood sample marked of Lydia Igandu
- (b) Kitchen knife
- (c) Blood sample for Brian Kariuki (Accused)

He testified that he was requested to do blood grouping and also to find whether there was any relationship with accused with blood group of deceased. The report of his analysis is shown as exhibit “1B” dated 24/1/2006.

1. The blood sample of the deceased was found to be of Group O.
2. The knife was lightly stained with human blood of group O.
3. The blood sample of the accused was found to be of group B

He further testified that the blood stains on the knife (Item B) matched in group of the blood sample of deceased, the blood stains could have come from deceased after injury. As to the facts there was evidence given by PW2 a 19 year old young man. On 14/2/2006 at about 2 p.m. he was selling water at Toplife Hotel when he saw a girl entering into the house of Brian Kariuki (accused). She was wearing a red top

and a pair of trousers. He said the distance from hotel to Accused door was 40 ft. He testified that he closed his business at 9.00 p.m. on that day. But before closing at 8.00 p.m. he saw Accused who asked him when he was closing his business. PW2 told the accused that he would close business at normal time (9.00p.m.) He further testified that from 2 p.m. he did not move from his place at the hotel until 9.00 p.m. He closed the business at 9.00 p.m and went to his home to sleep. It was in the morning the following day at 7.00 a.m He did not see Accused but he saw Munene's shop was open. He later heard there was a dead lady but he did not go to the place where the body was.

On cross-examination he explained that accused was occupying room next to his kitchen and he (accused) used to pass his kitchen. He added that the following day he saw accused standing outside Munene's shop with other customers. He greeted all the customers. Further evidence was given by PW3, James Nyaga Munyi, assistant chief of Gichiche. At 9.00 a.m. he was at his house when he received information that a dead body was found in the market. He went there and saw the body. He saw the body had the left arm cut. The tongue was protruding. She had a top and blue jeans. The body was of a lady. He went to police station and reported to the police. P.C Anthony and another police officer went to collect the body. He later came to know that the body was of Lydia Igandu. Then on 20/2/2006 he was informed that suspect had been seen at Embu Provincial Hospital. He travelled to Embu where he was arrested and (Assistant Chief) took him to Runyenjes then to Gichiche market where they opened his room and picked a knife with blood under the bed. On cross-examination he said the body was found inside the house where the accused was living with his brother 50 metres from where the accused had rented a house. Outside there was a maize plantation. In answer to a question by Mr. Mutahi Counsel for Accused he said he was given information by members of public.

PW4 Margaret Wanjiru John from Gichiche said on 16/2/2006 at about 6 p.m. she went home in the evening about 8.00p.m. At 10 p.m. she went to a nearby Kiosk and on coming back she met a man carrying a body. He was wearing gloves. She did not identify the girl although she used to see her. She testified that she knew the man. The girl he was carrying was wearing a red T- shirt and long trouser. There was moonlight it was about 10.00p.m.

On 17/2/2006 she saw people going in front of her house and even Assisted Chief was there. She informed the chief of what she had seen. Later she was invited by police to identify the person she had seen. She did so and later made a statement. Later on 7/3/2006 she participated in a parade and was able to identify the accused. Asked to read the identification form she said she does not know how to read. Then she said that when she saw the young man carrying the girl on his shoulder, she did not know whether the girl was dead or alive. Thereafter Linus Nyaga Njeru gave evidence. He was at home on 12/2/2006. The deceased gave him a valentine card to take to Brian (Accused) But he did not meet Brian so he left the card with the man who sells at the kiosk. On 17/2/2006 he saw a gathering of people looking at a body which was in a blue jeans and a red T Shirt. He did not recognize the dead body. His brother asked him to go with him to check. His family had not seen Lydia Igandu. This witness said that he came to know that the body was of Lydia Igandu later. PW6 was Andrew Nyaga Kandi. He testified that on 14/2/2006 his daughter left home and went to Gichiche market. She did not return on that day and on 15<sup>th</sup> and 16<sup>th</sup>, she was found on 17/2/2006 being dead. "I heard people say there is a girl found dead". He went to check but found the body already taken away to mortuary. He was escorted to the mortuary and was shown the body by the police and he saw it was the body of Lydia Igandu his daughter. He was able to identify the body because of clothes she was wearing. The head was cut off and the two ears. He was present when Doctor examined the body for post-mortem report. Later PW7 Dr. Njeru Mungai pathologist gave evidence on his examination of the dead body. He noted that the body was in advanced state of decomposition and it appeared that soft parts of nose and ears had been eaten off by an animal and on the left arm was missing. The Doctor was subjected to vigorous cross examination by Defence Counsel Hon Mutahi. His very detailed post-mortem report is produced as exhibit 3. His opinion was that the death was caused by trauma- physical assault. Chief Inspector Mutua Menden carried out an identification parade on 7/3/2006 in respect of the suspect Brian Kariuki. The witness produced the Form on identification marked Exhibit 4. The accused remarked that he was satisfied with the parade. PW10 P.C Said Woshe is the one who was at the station when (Assistant Chief) Nyaga reported that there was a murder case in his area. He with another officer proceeded to the scene and found a dead body of a female person. They took the body to Embu General Hospital Mortuary. Andrew

Nyaga reported his daughter was missing. He was told to check at Embu Provincial Hospital Mortuary and on checking he found that the body was of his daughter. He was told that she was last seen entering the house of accused and no one saw her get out thereafter but Margaret (PW3) told him that she had seen the accused carrying a body and that she could identify the person. He is the one who requested for an identification parade to be performed. He testified that he had gone with accused to his house and there recovered a knife under the mattress which the accused explained that he had cut himself. His blood was taken at Runyenjes Hospital. He picked knife with blood stains he gave exhibits to P.C Gitonga together with exhibit form. He also arranged for post-mortem to be performed. Photographs were produced by PW11 Reuben Imanyara from scenes of crime Personnel Department. Evidence of accused mental status was given by Dr. Maina. In any case the defence of insanity was not raised by the accused.

Against that evidence is the an unsworn statement of the accused. He said that he knew deceased who was his friend. He admitted having received a valentine card in 2006 February. This card was brought to him from a shop. This corresponds with the evidence of PW5 (Linus). He admitted that he saw the card had come from deceased. He also purchased his to her but she did not come to his house. He also admitted that on 14<sup>th</sup> February he was at home at Runyenjes. This is as testified by PW2 that he saw a girl enter the acc used house at about 2 p.m. and he saw accused at 8.00 p.m. when he (accused) came to inquire from him when he was closing the shop that night. Accused explained that his mother resides in Blue Valley Embu town but that their home is in Gichiche village where he spent valentine day in February 2006. Then he talked about what happened on 17/2/2006 and how he was arrested from near Izaak Walton Hotel in Embu by Assistant Chief of Gichiche and Runyenjes Police who took him to his home in Runyenjes in Gichiche and a search was made and some items recovered including a knife. How the knife was recovered was given in evidence by PW10 police officer who found it under the bed. From a close examination of the above evidence there is no dispute that the deceased was seen alive on the day of 14/2/2006 by PW2 when he saw a girl enter the house of the accused. Her dead body was recovered on 17/2/2006 and was later identified by her father for postmortem examination.

It is the evidence of PW2 that when a girl entered the house of Accused on 14/2/2006 she was not seen getting out of the house. PW4 Margaret Wanjiru John on 16/2/2006 at about 10.00 p.m. testified that she met a man carrying a body. He was wearing gloves. It is to be noted that in his unsworn statement the accused said that when the police officers searched his house they took gloves and a valentine card. PW2 testified that she did not identify the girl but she used to see her. The girl was wearing a red T- shirt and long trouser. And there was moonlight. Then on the following day on 17/2/2006 she saw people passing in front of her house, even the Assistant Chief. It is to be remembered that this is the day the body was recovered in the neighbourhood. In cross examination she said she knew the man carrying the girl. His home was near hers, but she did not know his name. She also testified that when she saw the girl being carried she could not tell whether she was dead or not. This witness also attended and identified the accused at identification parade. The evidence of this witness shows that the accused was seen carrying a body of a girl at night. The girl was wearing a red T- shirt and a long trouser. And this was on 16/2/2006 the third night after valentine day, 14<sup>th</sup> February. This evidence is also consistent and firm. There is no reason to doubt what the witness said. The accused himself said he was expecting the girl to his house on the night of 14<sup>th</sup> February.

The other evidence is that of PW10 P.C Woshe who made a search in his house and recovered the knife under the bed. The accused did admit that a knife was recovered. P.C Woche said the knife was with blood stains. And upon analysis by Government Chemist it is shown that the blood on the knife and that from the deceased were of blood Group O. Whereas the blood grouping of Accused was Group B. The conclusion to be drawn is that the knife was connected with the blood of deceased. It is to be remembered that the pathologist examination was done on 23/2/2006 when the body was in a state of decomposing and the estimated time of death was between 2 -3 days before discovery. And from the report it appears that the body was in a place where there were rodents eating off soft parts of the nose and ears. The flesh off the left arm seems to have been chewed by animals. The non medical witnesses including the father said on looking at the body they saw several cuts. The body was found in an abandoned kitchen.

In the view of the above definitely the death occurred before the animals chewed off soft parts of the

body which was left undiscovered for a period of time when rodents were able to eat off flesh from the dead body. I do not rule out the knife being the murder weapon. It is my view that the circumstances surrounding the death of this deceased pointed to the accused as the murderer. He had a connection with the deceased. He was expecting the deceased in his house that night of 14<sup>th</sup> and although he says she did not turn up, there is evidence that a girl was seen entering his house that afternoon and he was seen carrying on his shoulders a girl at night. And the description of her clothing corresponds with the clothes on her dead body at the mortuary when the photographs were taken. I direct my mind to the requirement that for a conviction to be based on the circumstantial evidence it must point directly to the accused person there and should be no other possibility open except that the Accused is the person who committed the offence. In this case the evidence points to the accused. There was an effort on his part to hide the body. PW4 met him carrying a girl's body. Whether she was dead at that time or not he was moving it and eventually it was found in an abandoned kitchen, dead.

I therefore find that the prosecution evidence has proved this case against the accused beyond reasonable doubt. I convict the Accused for the murder of Lydia Igandu (deceased).

Any statement to be made by the parties.

**Mr. Mutahi:** Nothing to say.

Mr. Kimathi the accused is a first offender.

Court: Sentence

The sentence for the offence is prescribed by law. I sentence the accused to death as provided by law.

Dated this 19<sup>th</sup> February, 2008.

**J. N. KHAMINWA**

**JUDGE**

**19/2/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Kimathi for State**

**Mr. Mutahi for Accused**

**Accused –present**

Judgment read in open court.

**J. N. KHAMINWA**

**JUDGE**