

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Case 50 of 2006

REPUBLIC.....APPLICANT

-VS-

ALICE WANJIKU THUO.....1ST RESPONDENT

JASAN CHEGE.....2ND RESPONDENT

JUDGMENT

The accused have been charged for the offence of murder, contrary to Section 203 as read with Section 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 4th January, 2006 at Mathare No.10 Estate within Nairobi Province, jointly with others not before court, murdered ELIJAH MUNGA.”

In her evidence, PW1 Mary Anyango testified that on 4th January, 2006 at around 8.00 p.m. while she was cooking food, her husband viz, Elijah Munga went to relieve himself outside the compound. Since the second gate was locked, Elijah Munga went to ask for the keys from “Mama Chiko”. Thereafter, a quarrel ensued and they started exchanging words. When PW1 went out, she found “Mama Chiko” assaulting her husband while using a panga. During the fight, “Mama Chiko” threatened to kill the husband to the PW1. The PW1 stated that she saw “Mama Chiko” hitting her husband thrice while using the blunt side. Consequently, Chiko (that is Accused1) called her brother viz, Njoroge who later assaulted Elijah Munga (the deceased). PW1 stated that Njoroge used a stick to assault her husband. Besides the above, PW1 also testified that the Accused 2 also assaulted her husband while using an iron-bar. In addition to the above, PW1 also saw “Rasta” assaulting her husband with a Maasai rungu. Apart from the above, PW1 also saw Accused 1 assaulting her husband on the chest while using a stone. Earlier, the Accused 1 lamented that the assailants had not properly beaten the deceased. On observing that her husband was in a critical condition, PW1 sought the assistance of neighbours to take her husband to Pona Dispensary. Unfortunately, the husband died on the following day. From there, PW1 went and informed her brother-in-law viz, Onyango who in turn alerted his mother. Thereafter, they reported the matter at Huruma Police Post. Eventually, they made arrangements to take the deceased to the City Mortuary. On the other hand, PW2 – Jane Wairimu Omuga, a businesswoman, recalled that on 5th January, 2006 she was informed that her son viz, Elijah had been assaulted by the Songoro family. PW2 was told that the assailants were Mama Chiko, Chege, Wanjiku and Rasta. Thereafter, PW2 accompanied Onyango to Pona Dispensary where she found that her son was already dead. PW2 also participated in making arrangements to take her son to the City Mortuary. In his medical evidence, PW3 – Dr. Zephania Kamau testified that on 19th May, 2006 he examined Alice Wanjiku Thuo (the Accused 1) and assessed her age to be around 29 years. Dr. Kamau also found her to be mentally fit and without any physical injuries. Apart from the above, Dr. Kamau also examined Jasan Chege (Accused 2) and found him to be about 43 years old. He also found him to be mentally fit and without any physical injuries. On his part, PW4 – PC David Wandetto testified that on 5th January, 2006 at around 2.30 p.m. while he was at Huruma Police Post, he was called by Inspector Mbogo who informed him and CPL Benson Wambua that somebody had been killed in Mathare No.10, Estate. From there, the mother of the deceased led them to the scene, where PW4 saw blood at the corridor of the house of the deceased. After viewing the body of the deceased at Pona One Clinic, PW4 later made arrangements to transfer the deceased to the

City Mortuary. Apart from the above, PW4 also testified that on the following day, he escorted relatives of the deceased to the mortuary where they identified the body of the deceased before a post-mortem was carried out. In her medical evidence, PW5 Dr. Jane Wasike, a pathologist, testified that on 12th January, 2006 she performed an autopsy on the body of Elijah Munga and found the same to be in good nutritional status. She also found a bandage on a scar, lacerations of the scalp, and a cut wound on the upper lip about 5 cm long. She also found haemorrhage on the upper limb and bruises on the face. Apart from the above, Dr. Wasike also observed fracture of the skull with massive subdural haemorrhage. Eventually, she formed the opinion that the cause of death was due to head injury due to sharp and blunt objects. In concluding her evidence, Dr. Wasike produced the post-mortem form that she had filled and signed as Ex.3.

In her defence, Alice Wanjiku Thuo (hereinafter referred to as the Accused 1) denied killing the deceased on 4th January, 2006. The accused 1, a tailor at the Export Processing Zone, Ruaraka testified that on the material day, she went to work at around 7.00 am and performed her duties for the whole day before going back to her house at around 9.00 p.m. She reckoned that, though she found many people outside, she entered her house where she prepared supper, ate and slept. On the following day while the Accused 1 was going to work at around 6.00 a.m., she met Mama Otieno who informed her that the husband had been attacked on the previous evening. By then, Mama Otieno was going to check on her husband at Pona Medical Clinic. However, after two days Mama Otieno informed her that the husband had died. According to the Accused 1, when she went back to her house on 14th January, 2006 she found that the same had been destroyed and household goods had been damaged. Seeing the above, the Accused 1 went to sleep in the house of Judy who was her friend. On the following day, at around 9.00 p.m. as the Accused 1 was coming from work, she was arrested by two police officers who were accompanied by a brother of the accused viz, Chege. The Accused 1 was later taken to Huruma Police Post where she was placed in custody for about a week. From there, she was taken to Muthaiga Police Station where she was held upto 22nd May, 2006 before being arraigned in court.

On the other hand, Jasan Chege (hereinafter referred to as the Accused 2) a businessman, recalled that on 4th January, 2006 at around 11.00 am he attended a family meeting that ended at around 6.00 p.m. From there, he went to his house which he reached at around 9.30 p.m. and found neighbours next to the gate who told him that the deceased had been beaten by some unknown people. The accused 2 was also told that the deceased had already been taken to the hospital. The Accused 2 denied any involvement in the incident since he was absent. On the following day, the Accused 2 met the widow of the deceased who informed him that the husband had been beaten and later died in hospital. The Accused 2 further explained that when funeral arrangements were being made, he continued residing in his house till 22nd January, 2006 when he was arrested by police officers who were accompanied by members of the family of the deceased. The Accused 2 was later taken to Huruma Police Post where he stayed for three days before being transferred to Muthaiga Police Station. Eventually, he was arraigned in court on 22nd May, 2006.

After the court delivered its summing-up, all the three assessors returned a verdict of “**guilty**” against the two accused. The first assessor stated that the Accused 1 had used a stone to hit the deceased on the chest. He also added that the Accused 2 had used an iron-bar to assault the deceased. He concluded by stating that both accused persons had played a key role in the death of the deceased. From the evidence on record, it is apparent that the incident took place at around 8.00p.m. on 4th January, 2006. Though the incident took place at night, it was apparent PW1 knew the assailants very well since they have been neighbours. In fact, in her testimony, PW1 referred to the names of the assailants with a lot of ease. Though the fight initially started between the mother of the Accused 1, and the deceased, both accused later intervened to assault Elijah Munga who is now deceased. Apart from the above, Njoroge and “Rasta” also joined the fight and assaulted the deceased. The medical evidence by Dr. Jane Wasike shows explicitly that the deceased had sustained multiple injuries. She concluded her evidence by stating that the deceased died due to head injury due to sharp and blunt objects. Unfortunately, after the incident the mother to the Accused 1, Njoroge and “Rasta” were not arrested. Upto now they are still on the run. Though both accused persons have denied committing the offence, the court hereby rejects their defence which is just a fabrication. Both the accused persons never impressed the court to be truthful. They were

very economical on the truth. I have no doubt whatsoever in my mind that the two accused were part of the group that viciously attacked the deceased. From the evidence, the fight started between the mother of the Accused 1 and the deceased. The two accused only joined the fight when the same was on-going. There was no evidence that the two accused planned to kill the deceased in advance. One cannot state with any amount of certainty that the killing was premeditated. The attack was spontaneous and impulsive. Due to the above, I hereby reduce the charge to that of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The said charge is a lesser but cognate offence. Whereas, I appreciate a verdict of the assessor, I hereby find that the accused persons lacked the mens required in the original offence. The upshot is that I find that the prosecution has proved the offence of manslaughter against the two accused beyond any reasonable doubt. The two accused are convicted for the offence of manslaughter, contrary to Section 202 of the Penal Code. Both accused are hereby convicted accordingly.

MUGA APONDI,

JUDGE.

8TH FEBRUARY, 2008.

Judgment read signed and delivered in open court in the presence of the accused: Mr. Anambo Defence Counsel, Mr. Wohoro State Counsel.

Order: Assessors to be paid allowances for 3 days.

MUGA APONDI,

JUDGE.

8TH FEBRUARY, 2008.