



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

Criminal Case 97 of 2004

REPUBLIC.....PROSECUTION

-VS-

JAMES MWANZIA MUTISO.....ACCUSED

JUDGMENT

The accused has 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 19th November, 2002 at Maili Saba, Biafra Zone, Nairobi within the Nairobi area, jointly with another not before court murdered JOHN ANYANGA NYANGWESO”.

In his evidence, PW1 Aineah Lusifi Smith who was staying in Maili Saba, Embakasi, stated that on 10th November, 2002 at around 8.00 a.m. two young men informed him that they had seen a body that had been thrown in a quarry. After confirming the story from Peter Mwangi and Jimmy Sanya, PW1 accompanied them to the quarry where he saw the body of the deceased facing down. Consequently, PW1 rang Insp. Wambugu and another police officer called “Major.” From the scene, they followed the trail of blood stains that led them to the house of Njoki whom they found holding a broom while entering the house. She later explained that the blood stains were caused by her monthly periods. Subsequently, PW1 entered Njoki’s house while accompanied by Joseph Karume and observed blood that was scattered upto the bed. Eventually, Njoki conceded that Mwanzia and another man had fought outside the house. From there, Njoki led them to the house of Mwanzia whom they never traced. Ultimately, PW1 rang Dandora Police Post that sent three police officers. Consequently, police officers discovered blood soaked clothes that were in a basin water. The officers later collected the following:

- § A shirt – Ex.1, net for curtains
- § Ex.2, large net for curtains
- § Ex.3, 2 table-clothes (pink)
- § Ex.4 (a) and white curtain
- § Ex. 4(b) and pant – Ex.5:

After two days, PW1 was summoned to Buru Buru Police Station where CID officers directed him to

record a statement. PW1 conceded that he only came to know the accused after he was arrested in connection with the theft of KShs.600/= from another woman. On the other hand, PW2 Peter Mwangi Kimani testified that on 10th November, 2002 at around 8.00 a.m. he was informed by his daughter viz, Priscilla Nyambura that there was somebody who was dead at the quarry. On arrival at the scene, PW2 turned the body of the deceased. Subsequently, both PW1 and PW2 followed a trail of blood stains upto the house of Njoki who explained that Mwanzia had been fighting with another young man. Earlier, PW2 explained that they had found Njoki uneasy and made her sit down. Since the crowd was agitated, PW2 and friends advised Joseph Karume to take Njoki to the police station. Thereafter, PW2 observed blood on the floor of the house of Njoki. He also observed a basin that had blood and blood stained clothes that were scattered. In addition to the above, PW2 also stated that Njoki had explained that the blood was due to her menstrual periods. In his evidence, PW3 –Paul Kimenye recalled that on 25th February, 2004 at around 11.00 a.m. while he was in the office of Mwenengi squatters, one Mweni went there and complained that she had been attacked by the accused and another not before court who later robbed her of cash KShs.650/=. After about an hour, Mweni spotted the accused and informed PW3 and other members of the public. Subsequently, the accused was arrested and taken to Mowlem Police Post where he introduced himself as James Mutua. On his part, PW4 Joseph Karanja testified that on 25th February, 2004 while he was in an office at Njiru ward, Nairobi, a woman went there and complained that she had been robbed of KShs.650/= and also threatened to be killed. Subsequently, the complainant led them to the house of the suspect whom she was referring to as “Osama”. After arresting the suspect, PW4 realized that his real name was Mwanzia Mutiso who is now the accused. Thereafter, they took the accused to Mowlem Police Station where they were informed that he was a suspect in a murder case. In his evidence, PW5 – PC Benedict Munyasia testified that on 10th November, 2002 at around 8.35 a.m. he and PC Lelu were instructed to go to Maili Saba where they found a dead body lying in a ditch. Later, they guarded the scene till personnel from the scene of crime went there. PW5 observed that the deceased had an injury on the head and stomach. Subsequently, they followed a trail of blood stains that led them to the house of Jacinta Njoki. Inside that house, PW5 found a basin containing blood-stained clothes. These were – a pink table-cloth – Ex.1, an orange shirt – Ex.2, a white stripped table cloth - Ex.3, white curtain net – Ex.4 and white curtain – Ex.5. On the other hand, PW6 – Snr. Sgt. Bernard Mulati confirmed and corroborated the evidence of PW5 in details. Besides the above, PW6 also interrogated Jacinta Njoki who conceded that on the previous night the deceased and James Mutiso had fought in her house. During the fight, she ran away and went back to her house on the following day. On going back to her house, she found the blood-stained clothes which she tried to wash. Apart from the above, PW6 later drew a sketch-map of the scene – Ex.7 showing the quarry and the house of Jacinta Njoki. In her medical evidence, PW7 Dr. Jane Waskike, a pathologist, testified that she knew Dr. Maundu since they had worked together for about three years. During that period she became familiar with his handwriting and signature. She recalled that on 11th December, 2002, Dr. Maundu conducted a post-mortem on the body of John Anyanga Nyangweso. He observed that the deceased, aged about 28 years old, was of good physique and nutrition. Apart from the above, Dr. Maundu also observed an artificial cut on the right posterior leg measuring ¾” x ½”, a cut on the right ear measuring 1½”, a bruised right parietal skull with scalp haematoma – 3” in diameter.

In addition to the above, he also found brain haemorrhage – though the other systems were not remarkable. Eventually, Dr. Maundu retired from the public service in early 2005. On his part, PW8 – Sgt. Peter Mwangi testified that on 10th November, 2002 at around 10.00 a.m. he accompanied Inspector Mbusia to Mowlem, Bondeni Estate. On arrival at the scene, PW8 was shown the body of the deceased that was lying next to a rock. Subsequently, PW8 took three photographs showing the body of the deceased from different angles. In his evidence, PW9 Stephen Matinde Joel Waiba, a Government Analyst stated that he had worked with Jeremiah Kavita Munguti for seven years. However, the said officer retired from the public service on attainment of the mandatory retirement age. During the period that they worked together, he became familiar with his handwriting and signature. He testified that on 11th and 18th December, 2002, the following items were received by the Government Chemist Laboratories:

§ Light blue underpant – Ex.6.

§ Pinkish table-cloth – Ex.1

§ Dirty white curtain – Ex.5,

§ Dirty mesh like white curtain – Ex. 4

§ Orange shirt – Ex.2

§ Dirty white curtain – Ex.3

After Mr. Munguti had examined the above items, he found the blood of the deceased to be group “b” while the underpant– Ex.6 was found to be moderately stained with blood. Both ABO grouping and species identification results were inconclusive. Secondly, he also found the table-cloth (item C), shirt (item f) and curtains (items (d) and (g) were lightly stained with blood. However, both ABO grouping and species identification were inconclusive. He also found that there were no blood stains on the curtains – (item (c). Eventually, on 21st July, 2003, Munguti prepared a report that was produced by PW9 as Ex.11. On the other hand, PW10 PC Patrick Mbuvi testified that on 11th December, 2002 he accompanied two relatives of the deceased to the City Mortuary where they identified the body of the deceased before a post-mortem was carried out and blood sample of the deceased taken. Subsequently, PW10 prepared the exhibit memo form before escorting the same to the Government Chemist. On 18th May, 2004, PW10 escorted the accused to Dr. Kamau for purposes of age assessment, assessment of any injuries and the mental status. Subsequently, Dr. Kamau found that the accused was mentally fit to stand trial. PW10 eventually produced the P3 form Ex.13. In her evidence, PW11 Cpl Lucy Mutisya testified that on 16th December, 2002 she was instructed by the DCIO, Buru Buru Police Station to take over a murder case from one Gatimu who was being transferred to North-Eastern Province. By then, Jacinta Njoki was in police custody while the present accused was at large. After compiling the file, PW11 forwarded the same to the Attorney-General who directed that Jacinta Njoki be charged for the offence of murder. While the trial was on course, the accused was arrested and taken to Buru Buru Police station. On the other hand, PW12 Jacinta Njoki Ndirangu who is a convict for the murder of the deceased in this case, testified that she used to stay in Maili Saba, Dandora where she used to sell foodstuffs for pigs. She recalled that on 9th November, 2002 at around 10.00 p.m. she heard her neighbour viz, Mwanzia quarrelling with somebody else, she reckoned that during the fight, they broke her door before falling inside. Thereafter, a lantern lamp fell down and went off before PW12 took off with her daughter and raised an alarm. Subsequently, PW12 reported the matter at Mowlem Police Post. On the following day, PW12 was informed by “Baba Mwangi” that a dead body had been seen on the way. Later, PW12 was escorted to a quarry by elders and she failed to identify the dead body. From there, PW12 was taken to Mowlem Police Post where she was placed in custody. PW12 identified the accused as Mwanzia.

In his defence, James Mwanzia Mutiso (hereinafter referred to as the accused) testified that in the year 2002, he was staying in Kariobangi Estate. That apart, the accused denied killing John Anyango Nyangweso nor even knowing him. The accused conceded that he was arrested on 25th February, 2004 and later taken to Mowlem Police Post. On the following day, the accused was taken to Buru Buru Police Station where he reckoned that he stayed upto 25th May, 2004. In concluding his defence, the accused denied seeing PW12 and of staying at Biafra Estate.

After the court delivered its summing-up, all the three assessors unanimously returned a verdict of “guilty” against the accused. The first assessor pointed out that PW12 was familiar with the voice of accused who was her neighbour. Secondly, she also pointed out that the accused had gone underground for two years after the commission of the offence.

From the evidence on record, it is apparent that none of the prosecution witnesses actually saw the accused attack the deceased on the material night. The only witness who was at the scene on that night was PW12 – Jacinta Njoki Ndirangu who stated that she had heard the accused – who was her neighbour quarrelling with an unknown person. Consequently, the two protagonists broke her door and fell inside her house. According to the PW12, the lantern lamp fell down and went off. She then managed to get an

opportunity to run away with her daughter before she raised an alarm. During cross examination, PW12 confirmed that she never saw the accused and deceased fighting. She also confirmed that she never had any business dealings with the accused before the incident. That apart, the court also notes that PW12 has already been charged and convicted for the offence of murder that related to the present deceased. Needless to state, her appeal is still pending before the highest court in the land. From the sequence of the events, it is apparent to this court that PW12 was economical on the truth and was purely protecting her interests. It will **not** be prudent and reasonable for this court to rely on the evidence of this single witness to convict the accused for the offence for murder. Though the accused may have seen a prime suspect for the offence of robbery the court does **not** have any cogent, water-tight and logical evidence to convict him for the present. It is due to the above analysis that I wish to differ with the assessors. Given the above, it is apparent that the defence case reasonable and plausible. The upshot is that I hereby find the accused “not guilty” of the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code. The accused is hereby “**acquitted**” and should be released forthwith unless held lawfully.

Those are the orders of the court.

MUGA APONDI

JUDGE

Judgment read and signed and delivered in open court in the

Open Court in the presence of the accused:

..... Defence Counsel

..... State Counsel.

Order: Assessors to be paid allowances.

MUGA APONDI,

JUDGE.

15TH APRIL, 2008.