

REPUBLIC OF KENYA

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

Criminal Case 20 of 2006

REPUBLIC.....APPLICANT

-VS-

PETER NDUNG’U.....RESPONDENT

RULING

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 night of 24th June, 2001 at Dagoretti within Nairobi Area Province, murdered MONICA NYAMBURA.”

During the trial, the prosecution called a total of six witnesses to prove their case. Three of the said witnesses are civilians and two medical doctors. The other witness is a police officer who took over the investigation of the case from PC Fredrick

Odera. Apparently, the accused and deceased were married and had stayed together for about eighteen months. After considering the entire evidence on record, it is obvious that none of the prosecution witnesses actually saw the accused committing the offence that he has been charged of. That apart, there was no evidence on record that showed that the accused was within the vicinity of the scene of the incident. In addition to the above, when the accused was arrested, he was not found in possession of any weapon that he may have used during the commission of the offence. Significantly, the accused was arrested a couple of hours after the offence was committed. In her medical evidence, Dr. Jane Wasike Simiyu who testified on behalf of Dr. Olumbe stated during cross-examination, that the deceased was found with multiple laceration on left frontal measuring 4cm – the nasal bridge measuring 3cm. She also had diffuse subgaleal haematoma, post mortem mutilation of the left forearm at elbow joint, left ankle joint and all toes. That apart, the deceased also had defence wounds of the right forearm – 8 cm. On internal examination, the deceased had subdural and subarchnoid haemorrhage. Dr. Olumbe concluded that the cause of death was head injury due to blunt object. During cross-examination, Dr. Wasike conceded that the deceased may have been hit by a train. That medical evidence has raised the possibility that the deceased may have sustained the injuries through an accident. This court cannot hazard a guess as to whether the injuries were sustained before or after her death. Only an expert could give evidence on the above.

Besides the above, PW5 stated that the accused was arrested on the same day that he was taking the deceased to Kikuyu Police Station in the company of other people. There was no evidence to suggest that the accused went into hiding nor abandoned his home after the deceased was killed. From the above evidence, there was nothing at all to connect the accused to the offence before the court. In the event that the accused opts to keep silent, no properly constituted tribunal directing its mind judiciously can convict him for the charge of murder. The upshot is that, I hereby find that the prosecution has failed to establish a prima facie case against the accused. I hereby **“acquit”** the accused under Section 306 (2) of the CPC. The accused should be released forthwith unless held lawfully.

Those are the orders of the Court.

MUGA APONDI,

JUDGE.

Ruling read signed and delivered in open court in the presence of the accused:

SAIDI KOLI - Defence Counsel

BIFWOLI - State Counsel.

MUGA APONDI,

JUDGE.

6TH MAY, 2008.