



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Case 13 of 2005**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**PATRICK MURIUKI KARIMU.....ACCUSED**

**RULING**

**Patrick Muriuki Karimu** was charged with the offence of **murder contrary to section 203 as read with section 204** of the penal code. The particulars of the charge stated that on the 5<sup>th</sup> day of February 2005 at Kagumo area, in Nakuru District within Rift Valley Province, murdered **Charity Wangechi Mwenja**.

The prosecution called a total of six (6) witnesses in their bid to prove the charge against the accused person.

Several witnesses gave evidence that on 6<sup>th</sup> February 2005, a body of a dead woman was found murdered lying by the road, at a place called Kamuru. **PW1, Joseph Kahara Migwi** was informed by his son, about the dead body lying by the road side, it was about 8.00am, he visited the scene, there after he reported the matter to the police.

Further evidence was given by **Faith Wanjiku Njenga PW2**. The deceased was last seen alive with the accused person at the home of PW2. They were drinking illicit brew and they left together, at that time, they were living together as man and wife. **PW3, James Ngotho Njoroge** was at the same venue, he found both deceased person and the accused at the home of PW2, but at that time, the illicit brew had run out. The deceased person left together with the accused person at about 8.30pm. PW3 left almost 30 minutes later. It was on the following day that he was informed that a body of a woman had been found murdered by the road side. He went to the scene and saw the body of the deceased lying by the road side. The body was naked; he had just known the deceased for a short while when she had started living with the accused person. The body was found at a distance of about one kilometre from the home of the accused person and from where they were drinking. It was also about one kilometre away from the accused person's home.

The matter was reported at Subukia police station. **P.C Geoffrey Too** and **P.C George Satia** visited the scene and collected the body of the deceased which was preserved at the Nyahururu District hospital mortuary. The same officers also attended the hospital when the post mortem examination was carried out on the deceased body. They also took a sample of blood from the deceased. The police also visited the home of the accused person after they established he was the last person to be seen with the deceased. They found the house of the accused person locked with a padlock from the outside. After establishing that the accused person was inside, they called him out and requested him to open the door. Since the accused person refused to open, they broke the padlock and gained entry into the house. They found the accused person sleeping with his clothes on. They also collected a blood stained pair of trousers, shoes

and a shirt belonging to the accused person.

The blood stained clothes of the accused person and the blood sample from the deceased body were taken to the Government chemist for forensic examination. The deceased blood group was established to be B. Even the blood group for the blood stains found on the clothes of the accused person was identified as B. Unfortunately; the blood sample from the accused person was not taken for analysis. According to the report of the Government analyst, the blood stains on the coat, shoes and the shirt of the accused person, all matched with the blood sample of the deceased. It is thus possible that the blood found on the accused person's clothes could have come from the deceased after the injury.

Counsel for the accused person submitted that the prosecution failed to establish a prima facie case that can lead to the conviction of the accused person. There was no direct evidence against the accused person. The only evidence against the accused person is circumstantial. The Fact that the accused person was seen drinking with the deceased and they left together in the evening before the body of the deceased was found murdered along the road is what made the accused person a first suspect.

The two were also cohabiting together as husband and wife, and when the police went to arrest the accused person he refused to open the door, thereby forcing them to break the door open. All these circumstances create several doubts as to whether it was the accused person who killed the deceased.

Counsel for the accused person further submitted that the accused person was detained in the police custody beyond the period of 14 days which is contrary to the provisions of **section 72 (3) (b)**. The accused person should be released on the grounds that his fundamental rights as regards a fair trial were infringed upon, because he was arrested on the 6<sup>th</sup> February 2006, and was not arraigned in court until 7<sup>th</sup> March 2006. Counsel made reference to several decisions by the High court and the Court of Appeal where it was held that holding a suspect beyond the statutory period provided in the constitution is tantamount to denying an accused person a fair trial.

The court records shows that the accused person was arraigned the Chief Magistrate's court on the 16<sup>th</sup> February 2006; he was remanded in custody until 7<sup>th</sup> march 2006 when he pleaded not guilty to the charge. Nothing therefore turns on this submission because the accused person was arraigned in court within the statutory period provided by the law.

I have analysed the evidence by the prosecution's witnesses while taking into account the principles set out in the case of **Bhatt Vs. Republic 1957 EA at page 334** where the court of appeal explained what is a *prima facie* case as follows:

*“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggestion that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case.*

*Nor can we agree that the question whether there is a case to answer depends only on whether there is 'some evidence, irrespective of its credibility or weight, sufficient to put accused on his defence. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true, as Wilson J. said that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weightily enough to prove the case conclusively: that that determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a 'prima facie case' but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”*

All the evidence that connected the accused person with the murder of the deceased was circumstantial, there was no direct evidence. In case of **Kipkering Arap Koskei & Another -vs- Republic 16 E.A.C.A 135:**

*“In order to justify, the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt”*

I have examined these circumstances but I am not satisfied that they lead to the inference that it was only the accused person and none other was responsible for the death of the deceased. Firstly, the blood sample for the accused person was not taken for analysis at the Government chemist. This was an oversight because, it is possible that even the accused person’s blood group was B, just like that of the deceased thereby creating doubts as to whether the blood was from the deceased, or the accused person. The body was found on the road which was used by other people; indeed some prosecution witnesses testified that the area was prone to insecurities at the time.

The other matter to consider is whether the accused person locked himself in the house and refused to open the door for the police while evading arrest. However the evidence is clear that the accused person was found sleeping with his clothes on. They had been drinking the previous night and it is possible that he was inhibited by alcohol; he was asleep and not consciously refusing to open to resist arrest.

With all the above doubts and gaps in the evidence, I find the prosecution has failed to establish a prima facie case requiring the accused person to be placed on his defence.

Accordingly, the accused person is found not guilty of the offence of murder and he is discharged under the provisions of section 306 of the Criminal Procedure Code.

Ruling read and signed on 16<sup>th</sup> October, 2008

**M. KOOME**

**JUDGE**