

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Case 87 of 2006

REPUBLIC.....PROSECUTOR

VERSUS

BETH WANJIRU NJOROGE.....ACCUSED

JUDGMENT

BETH WANJIRU NJOROGE alias Mary, the Accused, is charged with two counts of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charges are that on 23rd September, 2006 at Kinja Village in Nyandarua District within Central Province she murdered her two children, Margaret Wanjiru and Erastus Njoroge Wanjiru.

Of the five witnesses called by the prosecution none said that he or she saw the Accused kill her children. The Accused's mother, PW1, and father, PW3, said the Accused was the last person to be seen with her children alive. They said that the Accused claimed that she had taken the children to their father from whom she had been separated for over six years. They were, however, suspicious and caused investigations to be commenced. After about a month two bodies were taken out of a pit latrine in a nearby school but no autopsy report was produced. There is therefore no evidence that those were the Accused's children's bodies. The father of the children was also not called. So it is not clear whether or not the Accused took the children to their father as she claimed and if she did who could have killed those children.

From the evidence on record the Accused's conduct is clearly suspicious. But as was stated by the Court of Appeal in the case of **Faith Lukas Vs Republic Criminal Appeal No. 274 of 2006**, suspicion however strong cannot be the basis of a criminal conviction.

Taking all these factors into consideration I find that at the close of its case the prosecution has not made out a prima facie case to warrant putting the Accused on her own defence. Consequently, I acquit the Accused for lack of evidence and order that she should be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 26th day of November, 2008.

D. K. M ARAGA

JUDGE