



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE 19 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

PETER KINGORI GITAHI.....ACCUSED

JUDGMENT

Peter Kingori Gitahi was charged with two counts of the offences of murder contrary to **section 203 as read with section 204 of the Penal Code**. The particulars of the first count stated that on 28th January 2008 at Momo Area in North Nakuru District of the Rift Valley the accused murdered Nancy Nduta Kingori. The particulars of the second count stated that on the same night of 28th January 2008 at Momo Area in North Nakuru District of the Rift Valley the accused murdered **William Wangombe Kingori**.

Briefly summarised, the accused person was the husband of Nancy Nduta Kingori (*the 1st deceased person herein*). He was the nephew of the 2nd deceased person. The accused, and the two deceased persons were living together in the same compound. The accused person and his wife were occupying one room and the 2nd deceased person was occupying another room adjacent to their room. Several witnesses gave evidence on behalf of the prosecution. **Elizabeth Nyambura Githinji, PW3**, the wife of the accused person's brother, recalled that on 28th January 2008, at about 6.00 p.m. she was with the 1st deceased person Nancy Nduta. They also met the 2nd deceased person who enquired from them whether they were aware of the person who lit a fire so close to the house such that the houses almost caught fire. The two ladies walked to the house of Nancy Nduta but found the house was locked. The first deceased person called out the accused person but he did not answer. They decided to go together to the home of PW3. At about 9.00 p.m. the accused person came looking for the 1st deceased person, and they went away together.

Linda Wambui, PW2 woke up on the morning of 29th January 2008 at about 6.00 a.m. and wanted to milk cow's in order to prepare breakfast for her children. She noticed a goat in her garden and decided to drive it away. That is when she saw a body near the road and started screaming. As she was running away, she noticed another dead body of a woman. She was joined by other members of the family and neighbours that is when they noticed the dead bodies were of the 1st and 2nd deceased persons who were their relatives.

Joseph Kingori, PW4 is also the brother of the accused person. He was woken up by the screams of his wife; she had seen the murdered bodies of his uncle and sister-in-law lying by the road side. He saw the deceased had injuries on the head. They also recovered a knife and a blood-stained metal bar next to the dead bodies. PW4 reported the matter to the Police, a search for the accused person was mounted because he was the last person to be seen with 1st deceased person. They were living together in the same

compound with the 2nd deceased person. When the police arrived, PW4 testified that he spotted a jacket that belonged to the accused person and identified the bodies for purposes of post-mortem.

Cpl. Oswald Gitonga, PW1 was the OCPD commanding Mwitethia Police Control Base. He recalled that 29th January 2008, while at the Patrol Base he received information about the murder of two people at Mumoi area. He proceeded to the scene where he found the body of an old man and a lady. The bodies had injuries. He preserved the scene and called the investigating officer. At about 8.30 p.m. he was informed that the accused person who was suspected of the two murders was seen at Mwitethia Trading Centre. However when PW1 tried to apprehend the accused person, he managed to escape from arrest. PW1 went back to the AP camp, at around 2.30 a.m. somebody knocked at his door. He was surprised to find that it was the accused person. At the time, the accused person was dripping in wet clothes, he told PW1 that the members of the public were pursuing him and wanted to kill him. PW1 arrested the accused person and placed him in the cells, the matter was communicated with the Subukia Police.

PC Raphael Wambai, PW6 was the investigating officer. He received communication from PW1 who had arrested the accused person and held him at Mutethia Control Base. PW6 drove to Mutethia and got hold of the accused person and proceeded to the scene where they found the bodies of the 1st and 2nd deceased persons. PW6 interviewed the witnesses and recorded their statements. He also collected the iron bar and the walking stick which was suspected to have been used as murder weapons, he produced them as exhibits. He also recovered a blood stained jacket which the accused person was allegedly wearing on the material day.

PW6 attended to the post-mortem examination of the bodies, he collected blood samples which were taken to the Government Chemist for Forensic analysis. PW6 also produced the post-mortem examination report on the deceased persons which showed that both deceased persons died as a result of cardiopulmonary arrest due to severe head injuries due to trauma inflicted with sharp and blunt object. He also produced the results from the Government Chemist which showed that the jacket was heavily stained with human blood Group A which also matched with the sample of blood taken from the 1st deceased person. The accused person was also taken for medical examination. He was found to be of unstable mind. It was recommended that he should get psychiatrist help to be able to follow the proceedings.

When the accused person was put on his defence, he stated that he was asleep on 30th January 2008. When he woke up he saw a body lying outside his house. He started screaming and the neighbours came. They said it was possible that he is the one who had murdered the deceased that is when he ran to the police station and the police locked him up in the cells. Later on, the Police took him to where the bodies were. On the way they found a jacket which they said belonged to the accused person. He denied having committed the offence.

It is clear from the prosecution's evidence that there was no eye-witness who saw the accused person killing the two deceased persons. This case is based on circumstantial evidence that on the material day, the accused person left with the 1st deceased person at 9.00 p.m. The accused person was living with the two deceased persons in the same compound. When their bodies were discovered in the morning with deep cuts the accused person was nowhere to be seen. The accused person surrendered himself to PW1. The accused person offered a defence which is preposterous in the face of the evidence on record by the prosecutions witnessed particularly, PW2, PW3 and PW4. The defence that the accused person started screaming when he saw the bodies of his wife and uncle murdered and neighbours pointed an accusing finger at him of being responsible is completely at variance with the evidence by PW2, PW3 and PW4 who were the first people to see the bodies. By that time the accused person was not at the scene.

For the prosecution to succeed to prove the charge based on circumstantial evidence the facts in support of the case must be incompatible with the accused persons innocence and incapable of any other hypothesis other than it is the accused person and no other person was responsible for the deaths of the deceased persons. In this particular case, it is the accused person who was last seen with the two

deceased persons. All the three were living in the same compound, the accused with the 1st deceased and the 2nd deceased was living in an adjacent room.

When the bodies of the deceased persons were found murdered, the accused person was not at the scene. He later surrendered himself to the Police. These facts are incompatible with the accused person's innocence. See the case of **Simon Musoke v. R [1958] EA 715** where the Court of Appeal held:

“In a case depending exclusively upon circumstantial evidence, the court must, before deciding upon a conviction, find that the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt.”

And also the case of **Republic Vs Kipkering Arap Koskei & another 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”

It is for the above reasons that I find the prosecution have been able to prove the charge of murder against the accused person. The accused person was taken for medical examination. The doctor who examined him found that he was of unstable mind. Unfortunately, there is no indication that he was taken for further psychiatric treatment. Going by the evidence on record, it is clear that the accused person was not mentally sound when he committed the two offences. He was taken for medical examination immediately after the offence was committed and was found mentally unstable. It is for this reason that I pronounce the accused person guilty but insane. The accused person will therefore be detained at the President's pleasure.

Judgment read and signed on 14th November, 2008

M. KOOME

JUDGE