



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Murder Case 111 of 2005**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**HARRISON KAMURI WAHOME .....ACCUSED**

**RULING**

The accused person was charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

The particulars stated that on the night of 20<sup>th</sup> and 21<sup>st</sup> September 2005 at Timau Farmers within Umande Area in Laikipia District of the Rift Valley Province, murdered **Joseph Wachira Wahome**. The accused person, **Harrison Kimuri Wahome** was arraigned in court on 22<sup>nd</sup> February 2006 where he pleaded not guilty and the trial proceeded against him as charged. The prosecution called a total of six (6) witnesses who gave evidence in support of the charge.

Briefly stated, it was the prosecution's case that the deceased, **Joseph Wachira Wahome** was found murdered and lying on his bed in a room in a house that the deceased used to share with the accused. The deceased was with his clothes and shoes on and the body had deep cuts on the forehead and the jaw. The deceased is the brother of the accused person, they used to live together in the same compound where each of them occupied a room in a two roomed timber house. According to **Esther Muthoni Murigi, PW 1**, a neighbour of both the deceased and the accused person, their homes are about 300 metres apart and on 20<sup>th</sup> September 2005, **Esther** had engaged the services of the deceased as a casual worker in her farm and they worked the whole day. At 5.00 p.m, **Esther** saw the deceased once again at the communal grazing fields he was in jovial mood. On the morning of 21<sup>st</sup> September 2005, **Esther** was expecting the deceased to resume his duties as a casual worker and when he did not turn up at 7.00 a.m., **Esther** went out to the deceased compound and started calling him out. However, there was no answer and when **Karungari Muiruri Karanja (PW 2)** the deceased sister heard **Esther** calling out the deceased, she told **Esther** to call the deceased loudly as he was perhaps asleep. When there was no response, **Esther** decided to go back to her duties. Later on, **PW 2** was joined by **Beatrice Njoki Kabiru, (PW 3)**, a neighbour who had come to **PW 2**'s house to deliver to her fruits. **PW 2** told **Beatrice** that they had tried to call out the deceased who did not answer and she requested **PW 3** to accompany her to the deceased house to find out why he was not answering. The two ladies went to the deceased house and **PW 3** opened the door, she saw the deceased body lying on a bed with deep cuts and blood dripping on to the floor. She dashed out and told **PW 2** to raise an alarm as the deceased was murdered. Both **PW 2** and **PW 3** started screaming and they were joined by members of the public.

**Paul Mungai, PW 4** also a neighbour who was attracted by the alarm went into the house, and when he saw the body of the deceased he decided to report the matter to the police station.

Police Constable **Evans Chea, (PW 6)** based at the Nanyuki Police station received the report and visited the scene. He took a sketch plan of the scene. According to **P.C Chea**, he formed an opinion that there was a struggle before the deceased was murdered because the utensils in the house were scattered all over. The floor of the timber house where the deceased body was found is not cemented and it was clear there were foot marks on the floor.

From the injuries sustained on the body of the deceased, this witness formed the opinion that the injuries were inflicted with a sharp pointed instrument. The way blood was dripping from the body, it was his evidence that he formed the opinion that the deceased was murdered while in his room. He followed blood stains which led him to the room that used to be occupied by the accused. When the accused opened his room, **P.C Chea** found an axe in the room which used to be occupied by the accused. The axe had blood stains, it appeared as if somebody had tried to clean it as the handle was still wet. He also recovered clothes from the house occupied by the accused which were blood stained, namely; a black torn trouser, a blood stained khaki shirt, a purple torn shirt which this witness produced as exhibits. The axe was also produced as an exhibit and so were the postmortem report and P3 forms that were performed and carried out by the medical doctor. **P.C Chea** told the court that since the accused did not appear to have any visible injuries on his body, he formed the opinion that the blood found on the clothes that were recovered in his house must have been that of the deceased and thus he sent a blood sample for analysis but the results of this sample was not produced in court.

The evidence by **Harrison Kimuri Ngatia, PW 5** was formal in the sense that he identified the body of the deceased at the mortuary for purposes of postmortem examination.

At the conclusion of the prosecution's case, the learned Counsel for the accused **Mr. Onganyi** submitted that the prosecution had failed to establish a *prima facie* case against the accused person. Counsel urged this court to consider that there was no direct eye witness and the prosecution merely relied on circumstantial evidence to wit, the accused and the deceased were neighbours. In addition, the prosecution relied on the fact that some blood stained clothes were found in the room occupied by the accused person, however there is no evidence to show whose blood it was and more fundamentally there was no evidence to show that the clothes belonged to the accused person. The evidence by **P.C Chea** that the accused person had slept in the room next to the deceased house is not conclusive as the door to both the rooms occupied by the deceased and the accused were not padlocked. **Mr. Onganyi** therefore urged this court find that the accused had no case to answer.

On the part of the State, the learned state Counsel **M/s Opati** submitted that the prosecution had established a case against the accused person. She submitted that the totality of the evidence adduced from the prosecution's witnesses left no doubt that the accused was responsible of the death of the deceased. The trail of blood led to the accused room, where a murder weapon namely an axe was recovered and so were the blood stained clothes. All these pointed to the guilt of the accused person and since the accused admitted to having slept in his room on the material night, he ought to be deemed to have taken part in committing the offence or omitted to do something for purposes of aiding another person to commit the offence and thus he should be deemed a principal offender.

**(See Section 20 of the Penal Code)**

The issue for determination at this stage is whether the prosecution has established a *prima facie* case against the accused person to compel the accused person to answer. The prosecution relied on the circumstantial evidence and according to the State, the inculpatory facts are incompatible with the innocence of the accused.

I will now proceed to analyse the weight of the prosecution's evidence. There was no eye witness and the evidence against the accused person is circumstantial. The circumstantial evidence is that the accused person and the deceased were living alone at the time in the same compound. There was a trail of blood that led to the accused house and an axe that was said to have been the weapon used to commit the murder was recovered. The deceased and the accused person were brothers and according to **P.C Chea** there was bad blood between them. All the above evidence was given by **P.C Chea**, with profound

respect to Counsel for the State. This evidence by **P.C Chea** was not corroborated by the other witnesses namely **PW 1, PW 2, PW 3** and **PW 4** who were at the scene.

For instance, **PW 2** who is the sister of both the accused person and the deceased did not say there was bad blood between his brothers. So are the other witnesses who are their neighbours. These same witnesses did not identify the blood stained clothes as those belonging to the accused person. Being neighbours and a sister to the accused person nothing would have been easier than to identify the clothes produced as exhibits as belonging to the accused person. More fundamentally **P.C Chea** said that he sent a blood sample to the Government Chemist for analysis but he did not produce the results of the blood sample. I agree with Counsel for the defence that the prosecution has to establish a definitely cogent evidence that points to the accused and not to leave the court to assume that the blood stained clothes belonged to the accused and that the blood also belonged to the deceased. In a case depending on circumstantial evidence, it is important to look at each circumstance and examine them separately to determine their strength before putting the chain of evidence together to establish whether a conclusion can be drawn which is incapable of any other explanation except the hypothesis that the accused is guilty of the charge.

(See case of **Republic vs Kipkering Arap Kosgei [1949] 16 E.A.C.A 135** which was approved in a recent decision of the Court of Appeal in the case of **Sawe Vs Republic [2003] 2 KLR 357**)

***“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 .....*”**

***Suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence.”***

In the present case there are serious gaps, as pointed herein above, I find there is no legal basis for putting the accused through his own defence. The accused can only be heard if the court determines that the weight of the evidence implicates the accused that he ought to answer. There are serious short falls in the prosecution’s case and for the foregoing reasons, I find no credible evidence to link the accused person with the offence of murder. According to the provisions of **Section 306 (1)** of the **Criminal Procedure Code**, I hereby record a finding of not guilty.

The accused person may be released from custody unless otherwise lawfully held. The Assessors are hereby discharged and their allowances may be paid.

**Dated and delivered this 18<sup>th</sup> day of January 2007.**

**MARTHA KOOME**

**JUDGE**