



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Case 109 of 2003**

REPUBLIC.....PROSECUTOR

VERSUS

LINUS MAINA WANYAMBURA.....ACCUSED

J U D G M E N T

Linus Maina Wanyambura hereinafter referred to as the Accused is charged with the offence of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. It is alleged that on the 17th day of February 2001 at Githogondo Village in Kirinyaga District within Central Province he murdered Lazarus Warui Frengi.

This being a criminal case, the burden is entirely upon the prosecution to prove beyond reasonable doubt that the Accused did commit the offence. If there is any doubt the benefit must go to the Accused who must then be acquitted.

Eight witnesses testified on behalf of the prosecution. In a nutshell the prosecution evidence was as follows: -

The Accused and the deceased have been very good friends for a long time. The deceased was staying at Kiarugungu village, but used to often visit the Accused who was staying at Githogondo village.

On the 16th February 2001, the deceased spent the night at the house of the Accused. At around 2.00 a.m. Simon Njagi Ndambiri (P.W.2) a stepson to the Accused who was asleep in a kitchen at the home of the Accused heard screams coming from the house of the Accused. He tried to open the door to the house but found it locked from inside. P.W.2 ran and alerted his brother Ramadhan Kariuki Ndambiri (P.W.4) who was staying about ½ a Kilometre away. P.W.4, his wife Lucy Wanjiru Warui (P.W.5) and P.W.2 ran back to the house of the Accused. P.W.4 and his wife called out to the Accused and convinced him to open the door. On noting the body of the deceased inside the house P.W.4 and his wife went to report to the village elder (P.W.1) but did not find him. They then proceeded to the police station.

In the meantime James Muthike Runji (P.W.1) the village elder in Githogondo village had also been woken up by the screams. He came out of his house and traced the screams to the house of the Accused which was about 200 metres away from the home of P.W.1. He found many people surrounding the homestead. The Accused was standing within the homestead near the door to his house holding a panga. With the assistance of one George Kamau, and one Njagi, P.W.1 managed to get hold of the Accused and took possession of the panga.

Inside the house of the Accused they found the body of the deceased which was bleeding from the head. The deceased was clothed only with an underpant. P.W.1 and his colleagues escorted the Accused to

Wanguru Police Station where they reported the matter and handed over the panga which they had recovered from the Accused.

Cpl. Tom Nyangau (P.W.7) who was at the material time attached to Wanguru Police Station received the report of the murder from P.W.4. The officer accompanied P.W.4 and his wife to the scene where they found the body of the deceased lying in a pool of blood with cuts all over the body. P.W.7 escorted the body of the deceased to Embu District Hospital. He later took possession of the bloodstained panga which He produced in evidence.

On 28th February 2001 Dr. Gitau performed a post mortem examination on the body of the deceased. The post mortem report which was produced in evidence by Dr. Godfrey Njuki Njiru (P.W.8) under **Section 33** of the Evidence Act showed that the deceased's cause of death was circulatory collapse due to severe bleeding resulting from multiple cuts.

On the 2nd March 2001, Dr. Abraham Gatangi a Doctor at Nyeri Provincial General Hospital examined the Accused and found him to be suffering from Pneumonia. Dr. Gatangi also noted that the Accused was suffering from visual and auditory hallucinations and formed the opinion that the Accused was suffering from a mental illness. On 30th September 2003, Dr. Gatangi again examined the Accused and noted that He had been treated at Mathare Mental Hospital for *Shizophrenia*. He found that although the Accused was still under medication he was well orientated in time, place and person. He formed the opinion that his mental status was normal and certified that the Accused was fit to plead.

The Accused person gave sworn evidence in his defence. He explained that the deceased was his very good friend for a very long time. The Accused denied any knowledge of how the deceased was injured. The Accused does not even recall being arrested or being taken to Mathare Mental Hospital, but claims He only found himself at the hospital. The Accused recalled having been unwell earlier, and having been taken to Hospital by his son but He does not recall what happened thereafter.

From the evidence which was adduced by P.W.2, P.W.4 and P.W.5, it is apparent that the Accused and the deceased were the only two people who were inside the house at the time the deceased suffered the multiple cut injuries.

P.W.2 explained that at the time He first heard the screams the door to the house was locked from inside. P.W.4's evidence was consistent with that of P.W.2 in this regard as P.W.4 testified that He also found the door locked from inside and that it was only after He called out to the Accused and pleaded with him to open the door that the Accused opened the door only for P.W.4 to find the deceased lying down bleeding.

The evidence of P.W.4 was consistent with that of P.W.1 who recovered a bloodstained panga from the Accused. I find that the prosecution witness were truthful and gave clear and consistent account of the events. Although no one actually saw the Accused cut the deceased with a panga the evidence leads irresistibly to the conclusion that it was the Accused who cut the deceased with a panga.

The Accused in his defence has raised the defence of insanity as he claims that He does not know what actually happened nor does He remember having cut the deceased with a panga. The evidence of Dr. Gatangi (P.W.3) is consistent with the defence of the Accused as Dr. Gatangi who examined the Accused two weeks after the commission of the offence found the Accused to be suffering from a mental illness. The evidence of P.W.4 that Accused claimed He had been locked inside the house with a snake is a clear confirmation of P.W.3's evidence that the Accused was having visual hallucinations.

P.W.2 and P.W.4 also confirmed that the Accused was unwell and had been taken to hospital on the material day and appeared confused. Given that the deceased and Accused were very good friends and that there was no evidence of any malice aforethought or motive for the sudden attack, the Accused's defective state of mind appears to be the only logical explanation.

I do therefore find that at the material time although the Accused cut the deceased with a panga and

caused him injuries leading to deceased's death, the Accused was suffering from a mental illness and was incapable of understanding what He was doing or knowing that He ought not to commit the act or omission.

With due respect to the assessors, I find that notwithstanding my directions to them on the defence of insanity they failed to appreciate this defence and totally ignored it hence their returning a unanimous opinion of guilty to manslaughter. That opinion is neither supported by law or evidence. I do accordingly differ with the Assessors and make a special finding under **Section 166** of the Criminal Procedure Code that the Accused person is guilty but insane.

I order that the case shall be reported to his Excellency the President for action under **Section 168** of the Criminal Procedure Code, in the meantime, the Accused person shall be kept in custody at Kamiti Maximum Security Prisons.

Dated, signed and delivered this 9th day of February 2007.

H. M. OKWENGU

JUDGE