



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Case 35 of 2003

PUBLICPROSECUTOR

V E R S U S

PAUL KUNGU KARIUKIACCUSED

J U D G M E N T

The accused, **Paul Kungu Kariuki** is charged with the offence of murder contrary to Section 203 as read together with Section 204 of the Penal Code.

The particulars are that on the 17th day of March, 1999 at Ritho Village in Thika District of the Central Province murdered one Patrick Kanja Muturi.

Pw1, Samuel Nganga Muturi, Muturi, recalled events of 17th March 1999 when Esther Waceke (PW3) came home bleeding. She (Waceke) informed Muturi that Paul Kungu Kariuki, (hereinafter referred to as accused) had cut him. Accused was in the process of cutting Patrick Kanja (hereinafter referred to as the deceased). When Waceke intervened, she was also severely cut and sustained injuries.

Muturi took deceased to Kenyatta National Hospital and left Esther Waceke at Gatundu Nursing Home receiving treatment.

According to Muturi, the deceased had injuries on the head and passed away on 20th March 1999.

PW2, Benard Ndarwa Wanjiku, Ndarwa, heard screams from the home of David Ngare. He met Esther Waceke Kanja (PW3) holding her head bleeding profusely. Nearby he met accused standing holding a panga.

He ordered accused to put down the panga but accused refused. Accused instead turned against Ndarwa and chased him with a panga threatening to cut him. After a while, a crowd gathered and organized to take the victims to hospital. The police collected the body of the deceased and took Waceke (PW3) to hospital. He saw an axe lying by the deceased's side. He identified the axe and the panga accused had while chasing him.

PW3, Esther Waceke, Waceke, was the wife to the deceased, Patrick Kanja Muturi. She recalled that the accused, Paul Kungu Kariuki, came to their home on 16th March 1999 at about 4.00 p.m. Accused expressed the desire to go and visit Nguru Mutitu, an uncle, who was sick at his home. Accused wanted them to go together the same day but the deceased suggested that they visit the following day. Finally, the deceased's suggestion carried the day.

On 17th March 1999 Waceke (PW3) and her husband (deceased) went with the accused to see Nguru Mutitu. They found Nguru Mutitu and his daughter, one Mugure, in the compound. They exchanged pleasantries. Mutitu explained to his guests the nature of his illness.

As Waceke (PW3) and Nguru Mutitu took tea outside the house, Waceke heard a bang. She rushed to the scene, and found accused assaulting the deceased who ran and hid in house. On sensing danger, Waceke also hid in a house within the compound. Accused caught up with Waceke and dragged her towards the cattle boma and cut her three times, at the back of the head. Waceke's (PW3) screams attracted several people. Macharia responded and gave Waceke (PW3) first aid. She (Waceke) proceeded home and informed Nganga Muturi (PW1) of the incident. In court she identified the axe and panga used by the accused in cutting her and her husband, the deceased.

PW4, Gerald Njeru Mburu, Mburu, recalled events of 17th March 1999. He was home and heard screams. He responded and found accused cutting Waceke (PW3). Waceke told Mburu that her husband, the deceased, had earlier on been cut by the accused and was lying somewhere in the compound. Mburu organized transport to take Waceke to Gatundu Hospital and Patrick Kanja Muturi (deceased) to Kenyatta National Hospital. Later on, he heard that Patrick Kanja Muturi had succumbed to his injuries. On 26th March 1999 he went to City Mortuary to identify the body for purposes of conducting post mortem.

PW5 Isaac Macharia Mburu, Mburu, was at Kamariri village within Gatundu on 17th March 1999. He heard screams from the home of Nguru Wa Mutitu. He responded and found Patrick Kanja Muturi bleeding profusely, and assisted in organizing for transport to take him to hospital. Three days later, he heard that Patrick Kanja Muturi had succumbed to his injuries.

PW6, A.P CPL, Sima Ngure, Ngure, received information that someone went berserk and injured several people at Ritho village. In the company of APC Rogers Oloo, he went to the said village and found when the assailant had been apprehended. They recovered an axe and a panga which they were told had been used in the attack. He found that the victims had been taken to the hospital. He re-arrested the assailant, took him to Gatundu Police Station and handed over the exhibits to the officer-in-charge at the report office. He identified the panga and axe, which he had recovered at the scene.

PW7, No.66384 CPL Paul Maina Kailu, Kailu, was sent to the City Mortuary by O.C.S. Gatundu Police Station on 26th March, 1999, to witness the postmortem of Patrick Kanja Muturi, deceased. Post mortem was done by one Dr. Kirasi Olumbe and a report thereof admitted as exhibit 3.

PW8, Raphael Karanu Kimeru, Kimeru, is a trained psychiatrist Nursing Officer. On 7th April, 1999 he received a patient, Paul Kungu Kariuki, the accused. He examined him for mental assessment, age and evidence of recent injury. He found him to be mentally stable and had no physical injury. He produced the P3 relating to his examination as exhibit 3.

PW9, No.38655, P.C Francis Mulwa, Mulwa, recalled that on 12th September, 1999 he was on duty at Crime Branch Office in the company of P.C. Martin Nzioka and Inspector Nzioka. He was instructed by Inspector Nzioka to take possession of the exhibits – a knife and a panga. He compiled the file and forwarded it to the Attorney General for advice. He kept the exhibits in his custody and produced the panga and axe as exhibit 1 and 2 respectively.

PW10, Dr. Jane Wasike Simiyu, Simiyu is a pathologist. She had the privilege of having worked with Dr. Kirasi Olumbe whose handwriting and signature she was acquainted with. She produced the post mortem report by leave of the court under the provision of Section 33 as read together with Section 77 of the Evidence Act, (Cap 80 Laws of Kenya) as exhibits 3 in these proceedings. The cause of death was established as injury due to a blunt object.

At the close of the prosecutions case the defence counsel did not submit at that stage. The prosecutor, however, submitted that a *prima facie* case had been established to warrant the accused being put on his defence.

Having carefully evaluated the evidence adduced that far, I put the accused on his defence after explaining to the accused the provision of Section 306 (2) of the Criminal Procedure Code.

Accused chose to make sworn evidence and called one witness-

Dr. (Mrs) Archana Darnesh.

In his defence, the accused (**DW1**) case was that on 17th March 1999 he went to Nguru Wa Mutitu's home. While in the compound he was taken ill by epileptic fits. He fell down and was put in the shed within the compound to recuperate. He did not know what happened afterwards. Later he was told that he had cut the deceased with an axe. That all this happened in the course of the epileptic fit and he did not know what he was doing and that it was wrong. That he has always had epilepsy since 1990 and was on regular treatment. That after the arrest he got another epileptic attack. On 17th March 1999 he was told that the victim had passed on. That he did not intend to kill his uncle save for the fact of epilepsy which made him commit the heinous crime. His further evidence was to the effect that he used to get epileptic attacks almost fortnightly. That he is still under medication as of now.

DW2 Dr. (Mrs) Patel Archana Darnesh, holds a Masters Degree in Psychiatry and has been working at Mathare Mental Hospital since 1997. She had occasion to examine the accused in Mathare Mental Clinic. From the history, she opined that the patient was epileptic. She performed Electroencephalogram on the accused and produced the report in court as Exhibit D1.

According to the report, by Timothy Muoka **exhibits D1**, a person with epilepsy has three faces, namely, pre-etal, ictal and post ictal.

During the **pre-etal** phase and **ictal faces** the patient is confused and could involve in violent activities. During epileptic psychosis, which is the madness stage, the patient is not in touch with reality. The patient has no insight as to his behaviour. The patient demonstrates signs of violence.

Dr. Archana did examine the patient twice in 2004 October and realized that the patient was at psychotic stage. According to the said doctor epileptic psychosis varies from person to person. That it is possible that an epileptic patient can go berserk and kill while at the psychotic stage.

At the close of the defence case I summed up the evidence to assessors who returned a verdict of guilty.

In my judgment it is clear to me that both the accused and the deceased are relatives. The star witness Esther Waceke (PW3) saw accused assaulting the deceased. Accused chased her. She hid in a house. Accused dragged her towards the cattle boma and cut her three times at the back of the head. Her screams attracted Gerald Njeru Mbaru, (PW4) and Isaac Macharia (PW5). Macharia and Mburu organized for transport to take the deceased and Waceke (PW3) to hospital. The deceased passed on while undergoing treatment on 17th March 1999.

Dr. Jane Wasike Simiyu, Simiyu, produced the post mortem report which established the cause of death as injury due to a blunt object.

The accused defense is that he had no intention of killing the deceased. That he was epileptic and has bouts almost fortnightly. On 17th March, 1999 he was under such epileptic fit and in the course of it cut the deceased. That at that point in time he did not know what he was doing or if so that it was wrong. In support of his case he called **Dr. (Mrs) Patel Archana Darnesh**. Dr. Patel had the occasion to examine the accused at Mathare Mental Hospital. Her examination involved inter-alia electroencephalogram. She produced the report as exhibit D1. The gist of her testimony is that during epileptic psychosis, which is a madness stage, the patient is not in touch with reality. The patient has no insight as to his/her behaviour. The patient demonstrates signs of violence. She did examine the accused in October, 2004 and realized that the patient was undergoing epileptic psychosis and put him on anti-psychotic treatment. That epileptic psychosis varies from person to person. That it is possible for epileptic patient to go berserk and

kill in the process.

Arising from the prosecution's case, it is clear that the accused did cut the deceased with an axe. But the accused case is that he was not responsible for his acts. He was sick at that particular point in time. On the evidence I accept the defence put forward by the accused. However, I agree with the verdict of the three assessors. In the result, I enter a verdict of guilty but insane. I sentence him to death in accordance with the provisions of Section 332 of the Criminal Procedure Code. I order that the accused be detained at Mathare mental hospital for treatment.

Upon being given a clean bill of health the accused be detained at the President's pleasure. It is so ordered.

Dated and delivered at Nairobi these 19th day of April 2007

N. R. O. OMBIJA

J U D G E