



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Criminal Case 26 of 2004**

**REPUBLIC.....APPLICANT**

**V E R S U S**

**JEREMIAH MWATHE RIMBERIA.....ACCUSED**

**JUDGEMENT**

1. The accused in this case, Jeremiah Mwanthe Rimberia is charged with the offence of murder contrary to section 203 as read with s.204 of the Penal Code. It is alleged that on 17.3.2004 at Kirigu Village, Baitigitu Sub-Location Uruku Location in Meru Central District he murdered Gladys Karimi.
2. The evidence against and for the accused was as follows: P.W.1 Alice Kanugu M'Rukaria stated that she knew the deceased, Gladys Karimi who had leased a portion of one M'Mbui's land. It was Alice who found the deceased's body at 3.00 p.m. on the day she may have died and further stated that she saw the accused at 1.00 p.m. on the material day as he returned to the land but never saw him again. That after discovering the deceased's body and upon informing one Mwobi about it, the said Mwobi told her that Karimi had been cut several times. Mwobi made a report to the sub-area and later the accused was arrested.
3. In cross-examination P.W.1 said that the accused, Karimi and Mwobi were cultivating the same shamba but different portions of it and that Mwobi was helping Karimi cultivate her portion of it. That Mwobi also told her that he discovered Karimi's body at 4.00 p.m. as did P.W.1 who said that contrary to earlier evidence, she did not discover the body at 3.00 p.m.
4. P.W.2 Patrick Mwobobia Thurania said that on 17.3.2004 he and the deceased were cultivating a parcel of land in Kirigu village. That at 1.00 p.m. he went for lunch and left the accused and deceased going on with their work. Before he left, he said that he heard the accused telling the deceased to tell Alice, P.W.1, to leave his affairs alone. That during the morning the accused went to Alice's home on more than (seven) 7 occasions and was acting suspiciously. P.W. 2 left for lunch and at that time the deceased was resting under a banana plant. At 2.10 p.m. when P.W.2 returned, he found the deceased dead with a cut on the cheek and neck while the accused had disappeared.
5. P.W.2 stated further that after discovering the deceased's body he went to report to one Gacheri, a relative and not before he had changed his clothes. Later one Mung'atia, the deceased's brother made a report to the police.

6. It is worth noting that P.W.2 denied meeting Alice P.W.1 on the material day.
7. P.W.3, Janet Nkatha, employer of the accused had also leased out a portion of her land to the deceased. In the evening, having left the accused at the shamba, she returned and found that Karimi had died and the accused was nowhere to be seen.
8. It was P.W.3's evidence that on 14.3.2004 the accused had asked her for Ksh.500/- to take to his home on 17.3.2004 and when P.W.3 gave him Ksh.800/-, the accused returned Ksh.700/- and told her to keep it until the end of the month. This evidence is significant and should be borne in mind when I restate the accused's defence.
9. P.W.4 David Kimathi Magiri had seen the accused, the deceased and a third person cultivating different portions of one Ayub's land and when he returned at 3.00 p.m. He did not see them but learnt later that the deceased had died.
10. P.W.5 Mwatia Samuel Laibuni, brother of the deceased made a report that she had died and went to the scene, later made a report at Kariene Police Station and the body was taken away.
11. P.W.6 Dr. Isaac Macharia produced a medical report prepared by Dr. Irungu Muthukia and the findings were that the deceased had external multiple stab wounds on the right hand, a shallow cut on the left side of the chest, two deep cuts on the chest and the neck had been cut through the cervical spine which had multiple fractures. The cause of death was said to be injuries caused by the assault aforesaid.
12. P.W.7. P.C. Japheth Marete received the report of murder of the deceased from P.W.5, visited the scene, recorded witnesses' statements, took the body to the Meru District Hospital Mortuary, drew a sketch plan of the scene, traced the accused but failed to get him and then attended the conduct of the post-mortem on the deceased's body.
13. On 24.3.2004, P.W.7 arrested the accused who had in his words "surrendered" himself at Kariene Police Station and because he was a suspect as information obtained was that he had earlier quarreled with the deceased over what portion of land they should cultivate.
14. In cross-examination, P.W.7 said that in fact the accused was arrested when he went to report that he had a misunderstanding with his employer and that in fact he did not "surrender" himself in as was his earlier testimony.
15. When the accused was put on his defence he admitted that on 17.3.2004 he was working on Janet Nkatha's land where she had employed him at Ksh.1200/- a month. On the material date others on a different portion of the land were the deceased and Mwobi who were working together. That at 12 p.m. he returned a fork jembe which he had been using and went to his home. After 3 days he returned to his employer who refused to pay him and 2 days later he went to make a report at Kariene Police Station about the non-payment but he was instead locked up and later charged with the offence of murder. He denied killing Karimi.
16. Regarding Janet Nkatha's evidence, the accused said that it was Nkatha who gave him permission to leave on 17.3.2004 and return after 4 days which is what he did. He denied knowing of any attempt by anyone to locate him after the alleged murder.
17. At the end of the trial, the honourable Assessors passed a unanimous verdict that the accused was guilty of the offence of murder based on their common understanding of the evidence by the Republic and the defence tendered by the accused.
18. It is quite clear from the evidence above that there was no eye witness to the murder and no murder weapon was ever found. The accused was also not found with any incriminating evidence and all evidence against him was purely circumstantial. It has been said time and time again by our courts that circumstantial evidence is as good as any other credible evidence but all the chain of circumstances must

lead to one conclusion only; that the accused and no other person could have committed the offence he is charged with. The holding in Kariuki Karanja vs R [1986] KLR 190 makes the point even more clearer. The court in that case stated as follows:-

“In order for circumstantial evidence to sustain a conviction it must point irresistibly to the accused”

19. In the instant case and with the above background in mind, the circumstances that I can gather from the evidence against the accused are these;

- (a) he was at the scene with the deceased and P.W.2, Patrick Mwobobia shortly before the death.
- (b) He disappeared from the house of his employer after the death of Gladys.
- (c) He surrendered himself to the police a few days after the murder.

20. On the connection between the three circumstances, it is the case against the accused that all three put together show both the act of murder and intention to do so because according to P.W. 2, he spoke ominously to the deceased some hours before she died.

21. Unlike the honourable Assessors and with respect, I do not think that the above circumstances form such a strong link as to be the basis for saying that the case has been proved beyond reasonable doubt. I say so because on the first circumstance, even the accused admits in his defence that he was at the same shamba as P.W.2 and the deceased but at different portions of it. Between the accused and P.W.2 however, it is unclear who left the shamba before the other. Since the accused has got nothing to prove, then the exact conduct of P.W.2 also comes to the fore. His evidence alone cannot be the sole reason to say that merely because he left the accused at the shamba, which is debatable, then by itself that is a foolproof piece of evidence. It is not beyond suspicion that he too may have had a hand in the death and any doubts as I have can only favour the accused.

22. On the second and third issues, granted, the accused left his employer's home on the day of the murder and this is an admission that he candidly made. The reasons for so doing according to P.W.3 who was his employer were suspect because he had allegedly changed his mind a day earlier. What has troubled me about her evidence is an issue tied up with the alleged “surrender” to the police by the accused. I say so because P.W.7 said later in retracting the evidence of “surrender” that the accused actually went to the police to report that P.W.3 had not paid his dues. He was instead arrested and charged with murder. It is quite possible that P.W.3 changed her story to nail the accused when in fact she had allowed him to go home and see his children. In any event on this point. I am inclined to believe the accused whose sworn evidence was consistent and believable and was surprisingly corroborated by the investigating officer, P.W.7. In fact P.W.3 agreed that she paid the accused his salary after his arrest and in custody.

23. The only other issue I must address is that of malice aforethought. No credible evidence has been brought to prove this crucial limb of the offence of murder. If the alleged statement by the accused (according to P.W.2) that the deceased should tell P.W.3 to leave his affairs alone is proof of malice aforethought, then it falls far from being it. No evidence showing intent against the accused or in fact anyone else has been tendered and I believe the defence that the accused had no intent nor did he in fact kill the deceased.

24. This case was wholly framed on the limp suspicion that the accused killed the deceased but suspicion alone, however strong is no basis to convict and I do not see that the circumstances put forth as proof of murder are strong and chain linked for me to reach a decision of culpability.

25. In the end and for the above reasons, I must find as I hereby do that the offence of murder has not been proved beyond reasonable doubt.

26. I shall hold that the accused is “not guilty” of murder and I hereby acquit him and order his release

unless he is otherwise lawfully held.

27. Orders accordingly.

Dated delivered and signed this 15<sup>th</sup> day of May 2007.

ISAAC LENAOLA

JUDGE

In the presence

Mr. Mokuia Advocate for the accused

Mr. Muteti State Counsel for the State.

ISAAC LENAOLA

JUDGE