



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Case 74 of 2004**

REPUBLIC.....PROSECUTOR

VERSUS

MARTIN LEKAKIN SINOLE.....ACCUSED

JUDGMENT

The accused, Martin Lekakin Sinole was charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 25th June 2004 at Mangu village in Nakuru District, the accused murdered Mercy Waruguru Njoroge (*hereinafter referred to as the deceased*). When the accused was arraigned before this court, he pleaded not guilty to the charge. The prosecution called ten witnesses in its bid to prove the charge of murder against the accused. After the close of the prosecution's case, the accused was put on his defence. He gave a sworn statement in his defence. Closing submissions were made by Mrs. Ndeda, learned counsel for the accused and by Mr. Mugambi, learned State counsel. The court shall revert back to the issues raised in this case after setting out the facts of this case.

The deceased was married to PW1 George Njoroge Gatonye. The deceased resided at Mangu farm within Menengai area of Nakuru District. Her husband ran a business in Nairobi. The deceased and PW1 were blessed with several children who at the material time were all grown up and were residing away from home. The deceased lived alone in a three bed roomed house at the said Mangu farm. She was visited during weekends by PW1. In the said farm, the deceased kept dairy cows and also planted Maize and vegetables. She also planted Napier grass which she used to feed her dairy cows. For ease of communication, PW1 had installed a telephone line in the house. The deceased also had a mobile phone. From the testimony of PW1, he used to communicate constantly with the deceased. They discussed various issues including how the farm was run. The deceased delivered milk from the dairy cows for sale. The milk was usually taken to the main road which was about a kilometre from the farm. The said milk was collected by a lorry for delivery to the market.

A few weeks prior to the fateful date of the 25th June 2004, the deceased told PW1 that she was uncomfortable with the accused. The accused had been employed two months prior to the incident by the deceased to work as a herd's boy, milk man and a general farm worker. The deceased was dissatisfied with the accused's work. She told PW1 that she intended to sack the accused after getting a suitable replacement. The accused was housed by the deceased at the material time that he was employed. The accused slept at the servant quarters within the compound of the deceased. The deceased told PW1 that although she intended to terminate the employment of the accused, she had not disclosed this fact to the accused. On the 11th June 2004, the deceased was visited by her friend PW3 Monica Mumbi Njoroge. PW3 was in the company of one Ruth Wambui. She testified that the deceased told them that she intended to sack the accused from the employment. The deceased told PW3 that she was frightened of the accused because the accused was extremely rude to her. She suspected that the accused had stolen a key to the main door of the house. She told PW3 that since the loss of the key, she invariably looked under her bed to confirm that there was no one before she slept. She asked PW3, who was a member of her prayer group, to pray for her. The deceased was expected to attend a prayer meeting on the 22nd June 2004 but she did not attend the said meeting. She however offered milk to be used to prepare tea for the people who attended the said prayer meeting.

On the 24th June 2004, the deceased assigned work to the accused, PW2 Elijah Gitau, (*who had been temporarily employed to weed in the farm and further to do general cleaning at the dairy*) and one John, another casual worker. PW2 was assigned duties to weed the vegetables and later to spray pesticides on the maize. He was further instructed that after completing the task he was assigned, he was to wash the dairy. The accused was assigned the duty of pouring water on a perimeter wall which had just been constructed around the house. John was working at the farm. PW2 recalled that he was assigned the duties by the deceased at about 7.00 a.m. He worked until 6.00 p.m. on that day. He recalled that he did not see the deceased again. During the course of the day, when he sought to get further instructions from the deceased, he found the house of the deceased locked. The curtains were drawn. PW2 asked the accused, who was working within the compound, where the deceased was. The accused answered that he did not know where the deceased was. PW2 was not much concerned as to the absence of the deceased because he had enough work to do for the day. PW2 did not see the deceased the entire day until he left the compound late in the evening after assisting the accused to milk the cows.

Meanwhile, PW6 Rachel Nyaciama, a sister in-law of the deceased visited the deceased at her house on the said 24th June 2004 at about 7.00 p.m. PW6 resided at her farm within the Mangu area. She testified that she was a friend of the deceased and whenever the deceased went on a safari or was away from her homestead, she always requested her to take care of her farm. When she reached the homestead of the

deceased, she was surprised to find the deceased absent. She was further surprised when she entered the compound and found that the chicken and the cows had not been locked. She found the house of the deceased locked. All the curtains had been drawn. The motor vehicle of the deceased was parked within the compound. PW6 thought it unusual for the deceased to be absent from her home. She left the compound of the deceased and went back to her home which was about 4 km away from the house of the deceased.

On the same day, at about 10.00 a.m. while PW5 Patrick Lokale Lopetet was at Menengai Trading Centre, he saw the accused taking beer in a certain bar within the centre. The accused called PW5 to where he was seated inside the bar. He offered to buy a beer for PW5. PW5, who was known to the accused prior to the material day, was surprised by the generosity of the accused. This was because the accused had never before offered to buy him a drink. The accused then left PW5 drinking the beer at the bar. On the same day at about 8.00 p.m., the accused went to the shop of PW4 Hellen Wanjiku which is situated within Menengai Shopping Centre and purchased about 2 litres of kerosene. The accused paid PW4 Ksh.98/=. The accused then left the shop with the kerosene. PW4 knew the accused as an employee of the deceased. She did not find it unusual that the accused had purchased kerosene from her shop until the following day when she was informed that the house of the deceased had been set on fire. She then made a report to the police.

On the morning of the 25th June 2004, at about 7.00 a.m., as PW2 was preparing to go to work, he heard screams emanating from the house of the deceased. PW2 resided some distance from the house of the deceased. He rushed to the house of the deceased and realised that the house was on fire. There were many people in the compound who were assisting to have the fire put out. Among the people who were putting out the fire was the accused. PW3 recalled that she and her late husband were among the first people to respond to the screams emanating from the compound of the deceased. She testified that at that time one part of the house was on fire. Her late husband broke into the house with a view to salvaging property from the section of the house that was not on fire. She recalled that after her husband had entered the house, he came out screaming saying that he had found the deceased lying dead in her bedroom. The late husband of PW3 told her that the body of the deceased had been covered with a sheet while two gas cylinders had been placed near her body. The late husband of PW3 managed to retrieve the two gas cylinders before the fire spread to the area where the body of the deceased was lying. The people managed to put out the fire. A report was made to the police.

The police based at Menengai Police Station arrived at the scene after being informed of the fire. Among the police officers who visited the scene was PW7 PC Charles Waweru. He testified that he arrived at the scene at about 7.30 a.m. when the house was still on fire. He assisted the members of the public to put out the fire. He then went inside the house, which at the time was partially burnt, and saw blood on the walls of the corridor leading to one of the bed rooms. He also saw the body of the deceased lying partially on the bed and partially on the ground. The body of the deceased was in a kneeling position. There were heaps of clothes thrown around the body. He saw blood oozing from the chest of the deceased. He realized that the deceased had been killed.

PW7 went out of the house and informed the OCS who had accompanied him to the scene. The OCS rung the Scene of Crime officers to come to the scene and take the photographs of the scene. PW7 recalled that, at that moment, the fire again erupted from the roof of the house. This time the fire burnt the entire roof. The roof of the house collapsed into the house and entirely burnt the items that were at that time partially burnt. PW7 testified that by the time the fire was put out a second time, all the clothes that had been placed around the body of the deceased had been burnt. The body of the deceased was also burnt. PW7 testified that upon making preliminary inquiry at the scene, he was informed that the deceased lived with the accused. He arrested the accused and took him to Menengai Police Station with a view to further interrogating him. He retrieved the body of the deceased and took it to War Memorial Hospital mortuary where post-mortem was later to be performed.

On the 26th June 2004, PW7 was at the War Memorial Hospital mortuary when the post-mortem was performed on the body of the deceased. He took blood samples from the body of the deceased for the purposes of analysis by the government chemist. PW9 Dr. Paul Gachunga produced the post-mortem report which had been filled by his colleague, Dr. Kamindigo. He testified that Dr. Kamindigo had observed that the body of the deceased was partially burnt. The deceased had sustained a stab wound on her eye brows, a stab wound through the 5th intercostals space (*chest*), there was a stab wound just below the end of the ribs near the liver, there was another stab wound behind the armpit.

On internal examination, Dr. Kamindigo found that the stab wound on the chest had penetrated through the right ventricle, there was about 3 litres of blood in the chest cavity, and the penetrating wound had caused the rupture of the liver. There was about 2 litres of blood in the stomach cavity. Dr. Kamindigo formed the opinion that the cause of death of the deceased was hypovolemic shock due to internal haemorrhage from the rupture of the ventricles and the liver secondary to multiple stab wounds. The post-mortem report was produced as *prosecution's exhibit No.2*. The accused was taken to the Provincial General Hospital, Nakuru where he was examined by Dr. Kapkonyi on the 24th June 2004 who formed the opinion that the accused was 18 years of age and was mentally fit to stand trial. The duly filled P3 form was produced by PW8 Dr. John Ombonga on behalf of Dr. Kapkonyi as *prosecution's exhibit No.1*.

PW10 IP Leonard Lutta was assigned to investigate the case. He testified that he visited the scene on the 28th June 2004 and proceeded to Menengai Police station where he interrogated the accused. The accused told PW10 that he had differed severally with the deceased over the payment of his salary. PW10 was given a black jeans trouser and a kitchen knife by the OCS Menengai Police Station. He was informed by the OCS that the said items had been retrieved from inside a pit latrine within the compound of the deceased. PW10 sent the jeans trouser and the kitchen knife to the government chemist for analysis. The government chemist found that the kitchen knife and the trousers did not have any blood stains. The government chemist report was produced as *prosecution's exhibit No.3*. PW10 testified that his investigation revealed that the accused had disagreed with the deceased. He testified that the accused was the last person who was seen with the deceased while she was alive. He further testified that the accused had purchased paraffin the day prior to the house being set on fire. He testified that his investigations had revealed that it is the accused who had killed the deceased. He therefore charged the accused with the present offence.

When the accused was put on his defence, he denied that he had killed the deceased. He further denied that he had had any disagreement with the deceased. He testified that he had a good relationship with the deceased. He admitted that he had purchased the kerosene but stated that he had purchased the said kerosene for his mother who resided about 3 km away from the house of the deceased. He testified that he assisted the members of the public to put out the fire when he saw the house on fire after returning from the delivering milk to the milk

collection point by the road side. He testified that he was the only one who used to reside with the deceased within the compound. He testified that he did not hear anything unusual during the night before the house got burnt. He reiterated that he was not in any way involved with the death of the deceased.

In criminal cases, it is the duty of the prosecution to establish the guilt of an accused person to the required standard of proof beyond reasonable doubt. An accused person is under no obligation to prove his innocence. His duty is only restricted to raising reasonable doubt on the prosecution's case. The onus of proving a criminal case against an accused person is always on the prosecution and does not shift to an accused person. This court is required to evaluate the evidence that was adduced by the prosecution witnesses and the defence offered by the accused so as to reach its own determination whether or not the prosecution has established the guilt of the accused person.

In the present case, no one saw the accused kill the deceased. There is no direct evidence adduced by the prosecution linking the accused with the death of the deceased. The prosecution adduced circumstantial evidence in its bid to prove that it was the accused who killed the deceased. In law, circumstantial evidence was defined by the Court of Appeal in the case of **Sawe vs Republic [2003] KLR 364** at page 372 as follows;

“In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused person and of hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”

In the present case, it is the prosecution's case that no one other than the accused person killed the deceased. It is the prosecution's case that the accused had disagreed with the deceased to the point that the deceased was prepared to terminate him from employment. The deceased was dissatisfied with the manner in which the accused performed his duties in the farm.

The deceased complained to PW1, her husband, that the accused was not performing the tasks that he was assigned. The deceased told PW3, her friend, that she intended to terminate the accused from employment because the accused was rude to her. She further told PW3 that she was afraid of the accused and had suspected at the time that the accused had stolen a key to the main door of her house. She told PW3 that before she slept, she looked under her bed to confirm that there was nobody in her bed room. The deceased told her husband and PW3 that she had not informed the accused that she would terminate him from employment because she was looking for a suitable replacement. The deceased had indeed told PW2 that she would employ him permanently after terminating the employment of the accused.

The prosecution also adduced evidence that the accused was the only one who resided with the deceased within her compound. PW6 told the court of the unusual events that she witnessed at the homestead of the deceased. She told the court that when she visited the homestead of the deceased on the 24th June 2004 at about 7.00 p.m., she found the chicken and the cows not locked in. She found the house of the deceased locked. The motor vehicle of the deceased was within the compound. She was surprised that the deceased was not within her compound at that particular time. She was further surprised because the deceased had not informed her that she was going on a safari. The last time that the deceased was seen alive by PW2 was in the morning of the 24th June 2004. The deceased assigned him tasks to perform at about 7.00 a.m. PW2 worked in the farm. He left the accused working within the compound. The accused had been assigned to water the perimeter wall which had just been constructed. When PW2 came back to the compound at about lunch time, he saw that the house of the deceased had been locked up. The curtains had been drawn. He asked the accused the whereabouts of the deceased. The accused told him that he did not know where the deceased had gone.

At 8.00 p.m., on the 24th June 2004 the accused bought two litres of kerosene from the shop of PW4. PW4 knew the accused as the employee of the deceased. On the 25th June 2004, the prosecution witnesses testified that they put out the fire which was burning the house of the deceased. PW3 testified that her husband entered the house before it was consumed by fire. He found the body of the deceased lying on a corridor near the bed room. PW7, a police officer from Menengai Police Station, who visited the scene immediately after the report of the fire was made, testified that when he entered the house of the deceased, he found the body of the deceased in a kneeling position in the bedroom. The deceased was bleeding from a wound on her chest. She was already dead at the time. PW7 testified that a lot of clothes had been thrown near the body of the deceased.

PW3 recalled that her late husband told her that a lot of clothes had been thrown around the body of the deceased. Two gas cylinders were also put near the body of the deceased. It is clear from this evidence that the deceased was killed and an effort made to conceal the fact by setting her house on fire. The post-mortem on the body of the deceased revealed that the deceased was severally stabbed. The said stab injuries caused her death. Of particular significance was the evidence that the deceased had sustained stab injuries that resulted in her ventricles and her liver being damaged. The deceased then bled to death.

The issue for determination is therefore whether the evidence adduced by the prosecution witnesses established that it is the accused who killed the deceased. It should be noted that the accused is the only person who resided with the deceased within her compound at the material time. It should further be noted that the deceased had complained to PW3 as early as the 11th June 2004 that someone had stolen the key to the outer door of her house. The deceased suspected that it was the accused who had stolen the key. The relationship between the accused and the deceased was not good. In fact the deceased told her husband (PW1), her friend PW3 and PW2 that she intended to terminate the accused from employment. When the accused was interrogated by PW10 after his arrest, he told PW10 that he had a long standing disagreement with the accused over the payment of his salary. When the people saw the house of the deceased on fire, they found the said house locked.

In fact, PW3 testified that her late husband had to break into the house when he sought to salvage the properties in the house. It is therefore clear that the person who killed the deceased had access to the house. He gained access by opening the lock of the door to the main house. There was no sign of forceful entry into the house. There was no evidence that the house was broken into. It is therefore clear that the

person who killed the deceased gained entry to the house by opening one of the outer doors by using a key. It is clear from the evidence that the deceased was last seen alive on the morning of the 24th June 2004. The accused was the last person who was seen with the deceased when she was alive. PW2 did not see the deceased again on the entire day of the 24th June, 2004 after the deceased had assigned duties to him.

The issue for determination is therefore whether it is the accused and only the accused who could have killed the deceased. In his defence, the accused denied that he killed the deceased. He further denied that he had any differences with the deceased. He gave an explanation for purchase of the kerosene from PW4. He explained that he had purchased the kerosene to deliver to his mother. Upon evaluation of the totality of the evidence adduced, it is clear to this court that the accused purchased the paraffin so that he could use it to set the house of the deceased on fire. My analysis of the evidence points to the fact that the accused was killed on the 24th June 2004. This is because no one saw the deceased from the time she assigned duties to PW2 at 7.00 a.m. that morning PW2 was assigned duties to work at the farm. The only person who was within the compound was the accused. Later in the course of the day, when PW2 inquired from the accused where the deceased was, the accused told him that he was not aware of the whereabouts of the deceased. PW2 saw that the house of the deceased was locked. The curtains were drawn.

The behaviour of the accused on the material day was uncharacteristic. At 11.00 a.m., when he was supposed to be at his place of work, he was at the nearby centre drinking beer. He even offered to buy beer for PW5. PW5 was surprised because the accused had never offered him a drink before. The accused neglected his duties in the evening of that day. When PW6 visited the house of the deceased at about 7.00 p.m. she found the cows and the chicken not locked in. She saw the curtains to the house of the deceased drawn. The house was locked. The motor vehicle of the deceased was parked in the compound. PW6 was surprised that the deceased was not at home at the time. She was further surprised that the deceased could have gone on safari without informing her. It was usual for the deceased to inform PW6 when she was away from her home so that PW6 could take care of the house while she was away.

My further evaluation of the evidence clearly indicate that it is the accused that killed the deceased. He was the only one who resided with the deceased in the compound. The relationship between the accused and the deceased was not good. The deceased had told PW1, PW2 and PW3 that she was dissatisfied with the way the accused performed its duties. It is also apparent from the testimony of PW3 that the deceased was not comfortable living with the accused in the same compound. The key to the main door of her house was stolen on the 11th June 2004. The deceased suspected that it was the accused who stole the key. The deceased told PW3 that she was apprehensive that the person who stole the key could hide in the house so as to cause her harm while she was asleep. That is the reason why she looked under her bed before she slept. The deceased told PW3 to remember her in her prayers during that period. It is apparent that the deceased had a premonition of her death.

As stated earlier in this judgment, the person who killed the deceased gained access into the house through the main door. There was no evidence to suggest that the house of the deceased had been broken into. The late husband of PW3 walked around the house on the morning of the 25th June 2004 when the house was on fire. He saw that the house was locked. He decided to break into the house to salvage some of the properties of the deceased from the part of the house that was not on fire. It was then that he found the body of the deceased lying in the corridor near the door to one of the bedrooms. PW7, the police officer who visited the scene also saw that the deceased had sustained stab injuries on her chest. The post-mortem report confirmed that the deceased was severally stabbed on her torso that caused the the fatal injuries.

This court is aware that the evidence adduced against the accused is circumstantial. My analysis of the evidence clearly points to the fact that it was the accused and no one else that killed the deceased. He had a motive. He had disagreed with the deceased. He got wind that he was going to be terminated from employment. He had the opportunity. He was the only one who had access to the compound and the house of the deceased. He behaved abnormally on that day. It is clear that the accused set the house of the deceased on fire so as to conceal the fact that the deceased had been stabbed to death. PW3 testified that two gas cylinders had been placed next to the body of the deceased before the house was set on fire. The said gas cylinders were removed from the house before the roof caved in when the fire reignited. There is no evidence to suggest that the said house accidentally caught fire. It was deliberately set on fire. The evening before the house was set on fire, the accused purchased paraffin from the shop of PW4. Although the accused stated that he had purchased paraffin for his mother, taking into consideration the totality of the evidence adduced in this case, it is clear that the accused purchased the said paraffin to set the house of the deceased on fire.

The evidence adduced by the prosecution are not pieces of coincidental occurrences. It is evident that it points to the guilt of the accused and to no one else. His conduct on the 24th June 2004 is consistent with the evidence which was adduced by the prosecution witnesses that points to the fact that he was the one who killed the deceased. He killed the deceased because he had disagreed with her. I do therefore hold that the prosecution proved to the required standard of proof beyond reasonable doubt that it is the accused that deliberately killed the deceased. He is guilty of murder in accordance to **Section 203 as read with Section 204 of the Penal Code**. I considered the defence of the accused. The said defence did not raise any issues that could dent the otherwise strong circumstantial evidence adduced against the accused by the prosecution. The three assessors who assisted this court during the hearing of this murder trial reached similar verdicts that the accused is guilty of murder. I agree with them with their verdicts.

The accused is accordingly convicted of murder in accordance with **Section 203 as read with Section 204 of the Penal Code**.

It is so ordered.

DATED at NAKURU this 14th day of June, 2007.

L. KIMARU

JUDGE