



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE 108 OF 2004

REPUBLIC.....PROSECUTOR

VERSUS

GEORGE KIRIKA NJOROGE.....ACCUSED

JUDGMENT

The accused, George Kirika Njoroge 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 14th July 2004 at Gatongu Farm in Nakuru district, the accused murdered Ann Njeri (*hereinafter referred to as the deceased*). When the accused was arraigned before this court, he pleaded not guilty to the charge. The prosecution called eight witnesses in its bid to establish the charge of murder against the accused. After the close of the prosecution's case, the accused was put on his defence. He gave an unsworn statement. After the close of the defence case, submissions were made by both the accused and the prosecution. This court shall revert back to the said submissions made after setting out the facts of this case as narrated by the prosecution witnesses.

The deceased, Ann Njeri was a girl friend of the accused. At the material time, the accused and the deceased had apparently disagreed. Their relationship was not as good as it used to be. The deceased was earlier married but her husband died in the year 2000. On the 14th July 2004, at about 7.30 p.m., the deceased was at her house at Gatongu farm together with her three children one of whom is PW3 Joyce Wangoi. According to PW3, who was aged about seven (7) years at the material time, the deceased was at the kitchen cooking when the accused arrived at their homestead. Although the accused and the deceased were lovers, they did not live together. The accused lived at his residence about two kilometres from the homestead of the deceased.

According to PW3, the accused asked the deceased for water. The deceased instructed PW3 to fetch water for the accused. When PW3 served the glass of water to the accused, the accused refused to take the water. PW3 did not know why the accused refused to take the water that she had given him. At that time, the accused was standing outside the door to the outdoor kitchen. The deceased moved from the kitchen and went to the main house with her children who included PW3. She then locked the door. The accused was standing outside the house. According to PW3, the accused then knocked hard at the door demanding that the deceased open the door. After persistently knocking at the door, the deceased opened the door. PW3 testified that an altercation ensued between the accused and the deceased. After a short while, the accused removed a knife which he was carrying and severally stabbed the deceased. The deceased and her children screamed thus alerting the neighbours. After stabbing the deceased, the accused ran away from the homestead.

The first person to respond to the screams was PW1, Rahab Wanjiku, the mother in law of the deceased who lived a short distance from the homestead of the deceased. As she was rushing towards the homestead of the deceased, she heard footsteps of someone running away from the homestead of the deceased. She entered the house of the deceased and found her seated on her bed. She was bleeding heavily from the many stab wounds on her body. PW1 asked the deceased the person who had injured her. The deceased told PW1 that she had been stabbed by the accused.

PW1 knew the accused prior to the incident as she had seen the accused visit the deceased. As PW1 was talking to the deceased, PW2 Joseph Mwangi Gichuru, who also lived within the neighbourhood, arrived at the scene. He heard the deceased tell PW1 that she had been stabbed by the accused after apparently the accused had taken offence to the fact that the deceased had refused to serve him with drinking water and had instead asked her daughter to serve him with a glass of water. PW6 Anthony Mukundi Nganga, a neighbour of the deceased also responded to the cry for help and arrived at the homestead of the deceased where he saw that the deceased had been stabbed and was bleeding profusely from the stab wounds.

PW1, PW2 and PW6 then made arrangements to have the deceased taken to hospital due to the serious nature of the injuries that she had sustained. They looked for a vehicle to ferry the deceased to hospital. In this regard, they were assisted by PW4 Peris Wanjiku Kariuki a relative of the deceased. PW4 also managed to talk to the deceased before she was taken to the hospital. The deceased told her that she was feeling thirsty apparently due to the loss of blood. The deceased requested PW4 to give her water. PW4 asked the deceased to tell her the person who stabbed her and the reason for the stabbing. The deceased told PW4 that she had been stabbed by the accused because she did not want their friendship to continue. The deceased had desired her love affair with the accused to stop. The accused was however unwilling to let go of the relationship. PW4 knew the accused by sight because he was a resident of Gatongu Farm.

PW1, PW2, PW4 and PW6 were able to secure a motor vehicle to take the deceased to hospital. Before taking the deceased to hospital, they made a report of the stabbing incident to the police at Kirengero Police Station. They arrived at the police station at about 10.00 p. m. They found PW7 PC Willy Ngunjiri and PW8 PC Patrick Ndirangu. The said police officers noted the report in the occurrence book and instructed the deceased to be taken to hospital immediately. They gave a note to the persons who were ferrying the deceased to hospital to confirm that they had reported the incident to the police. The deceased was taken to the Provincial General Hospital Nakuru where she was admitted at the ICU. By the time the deceased was admitted at the said hospital, she was not talking. However, it is apparent that in the two weeks that she was admitted at the said hospital, she occasionally was able to talk to the persons who were taking care of her, particularly PW4. The deceased succumbed to her injuries and died on the 28th July 2004.

On the 3rd August 2004, Dr. Riro Mwita performed a post-mortem on the body of the deceased. The post-mortem report was produced on behalf of the said Dr. Riro Mwita by PW6 Dr. Collins Masolo, a work mate of Dr. Riro Mwita. Dr. Masolo testified that he was familiar with the handwriting and the signature of Dr. Mwita. He testified that Dr. Mwita noted that the deceased had sustained several stab wounds on her body. He noted that there were stab wounds on the left and the right hand, on the abdomen, on the back and on her legs. The stab wounds on the abdomen had resulted in the perforation of the ascending colon. The contents of the colon had leaked into the peritoneal space. Dr. Mwita formed the opinion that the cause of death of the deceased was penetrating abdominal injuries involving the large gut leading to massive leakage of the gastric contents. The post-mortem report was produced as *prosecution's exhibit No. 1*. Dr. Masolo produced the P3 form which had been filled by Dr. J. M. Mburu who examined the accused after his arrest on the 19th November 2004. Dr. Mburu formed the opinion that the accused was mentally fit to stand trial. The P3 form was produced as *prosecution's exhibit No. 2*.

PW7 and PW8 were the investigating and arresting officers in this case. They testified that after the report had been made by the relatives of the deceased to the police station, they visited the scene of crime on the 15th July 2004 at 6.00 a.m. They observed that there was a lot of blood on the floor of the house of the deceased. They thereafter went to the hospital with a view of interviewing the deceased. They found that the deceased was not in a position to talk. They then launched a search for the accused. They went

to the house of the accused several times but were unable to find him. According to PW7 and PW8, it was apparent to them that the accused had gone into hiding. They did not relent in their effort to look for the accused.

On the 17th November 2004, PW7 and PW8 received information of the whereabouts of the accused. They were informed that the accused was hiding in Bahati area. With the aid of an informer, they were able to trace the accused and arrested him on the same day. After the conclusion of the investigations, the accused was charged with the present offence. PW7 testified that his investigations had revealed that the accused and the deceased used to be lovers but the deceased had indicated her wish to end the relationship. The accused was unhappy with the fact that the deceased wanted to end the relationship and had in fact started another relationship with another man. The accused had warned the deceased several times not to attempt to end the relationship. According to PW3, the daughter of the deceased, the accused had at one time prior to the fateful evening assaulted the deceased. The eldest son of the deceased had intervened and had hit the accused with a piece of wood thus succeeding in rescuing his mother, the deceased, from the said assault.

When the accused was put on his defence he confirmed that indeed the deceased was his lover. He testified that apart from being friends, they were also engaged in the business of buying and selling beans. He recalled that on the 14th July 2004 at about 7.30 p.m., he went to the homestead of the deceased and found the deceased washing one of her children. The deceased was with two of her three children. Her eldest son called Sammy had gone to the house of a neighbour to watch television. She testified that she requested to be given water for bathing but PW4 Joyce Wangoi misunderstood his request and instead gave him water to drink. It was at that point that he clarified that he wanted water to bathe and not to drink. The deceased asked him to be patient as she finished washing the children so that she could warm the bathing water for him. He testified that he went to the main house where a hurricane lamp had been put on. The deceased went to the main house with the children and started oiling the children.

As she was oiling the children, the accused testified that an unknown person entered the house and started slapping him. A struggle ensued between him and the stranger. The deceased tried to separate them. He heard people screaming. After a short while he managed to extricate himself from the person and ran out of the house. He ran into the maize plantation but unfortunately fell into a ditch. He recalled that he became unconscious and when he came to, he went back to the house of the deceased and found that it had been padlocked. He went to his house and slept.

On the following day, he learnt that the deceased had been injured. He testified that he went to the hospital and saw the deceased. He even purchased drugs for the treatment of the deceased. When the deceased succumbed to her injuries and died, the accused participated during the funeral arrangements and later attended the funeral of the deceased. The accused denied the allegation by the police that he had disappeared from the area after the said incident. He denied that he had gone into hiding after the said incident. He testified that he was arrested on the 17th November 2004 when the police went to his butchery where he was conducting his business. He denied that he had anything to do with the death of the deceased. He testified that the deceased was killed by the unidentified man whom he had fought with at the house of the deceased. The accused pleaded his innocence.

In criminal cases, the onus to establish the guilt of an accused person is on the prosecution. The prosecution is under a duty to establish the guilt of an accused person to the required standard of proof beyond reasonable doubt. The accused is under no obligation to prove his innocence. The duty of an accused person is only restricted to raising reasonable doubt on the prosecution's case against him.

In the present case, it is the prosecution's case that the accused went to the house of the deceased on the material evening and stabbed her several times thus causing her to sustain fatal injuries. The prosecution relied on several pieces of evidence in its bid to establish the guilt of the accused. The first piece of evidence was that of PW3 Joyce Wangoi, the daughter of the deceased. PW3 was a child of tender years at the material time of the incident. In law, her evidence must be corroborated. She testified that the accused went to their home, picked a quarrel with the deceased after which he stabbed her several

times with a knife which the accused had brought with him. She testified that after stabbing the deceased, the accused ran away. The deceased and her children screamed thus alerting the neighbours.

PW1, PW2 and PW6 arrived at the scene immediately after the incident. They saw that the deceased had been stabbed and was bleeding profusely from the stab wounds which had been inflicted on her body. PW4 was later informed of the stabbing incident and also visited the deceased in her house before the deceased was taken to hospital. The deceased told PW1 and PW4 in the presence of PW2 that it was the accused who had stabbed her. The deceased narrated to the said witnesses how she had sought to end the friendship with the accused but the accused was unwilling to let go of the said love affair. She further told the said witnesses how the accused had picked a quarrel with her before stabbing her. The deceased was taken to hospital and was admitted for two weeks before she succumbed to her injuries and died.

In law, the statement made by the deceased to PW1, PW2 and PW4 is referred to as a dying declaration. **In Okethi Okale & Anor. Vs Republic [1965] E.A 555** the Court of Appeal held that a trial court should exercise caution when receiving the evidence of a dying declaration and in most cases it should not admit such evidence unless it is corroborated. The prosecution put forward evidence to establish the motive why the accused stabbed the deceased. According to the testimony of PW4 and that of PW7, one of the investigating officers, the accused and the deceased were lovers but their love affair had turned sour. The deceased wished to end the relationship but the accused was unwilling to let go. According to PW7, the deceased had even started another relationship with another man. The accused was unhappy by this turn of events. It is apparent from the evidence of PW4 that the disagreement between the accused and the deceased had simmered for sometime before escalating on the fateful evening of the stabbing. According to PW4, the accused had on some day prior to the fateful evening assaulted the deceased. The deceased was rescued from further punishment when her elder son intervened by hitting the accused with a piece of wood.

In criminal cases, it is not necessary for the prosecution to prove motive. But where a motive is established, then this court is required to evaluate if the said motive was of such a nature that it would have led to the accused to form an intention to injure the deceased. In the present case, there is the direct evidence of PW3 who testified that she saw her mother being stabbed by the accused. Her evidence is however that of a child of tender years. It required corroboration. Does the evidence of the dying declaration of the deceased to PW1, PW2 and PW4 offer sufficient corroboration of the testimony of PW3? The accused denied that he stabbed the deceased. He however testified that he was in the house of the deceased at the material time when the stabbing took place. He testified that the deceased was attacked and stabbed by an unknown assailant (*a man*) who had attacked them when he entered the house unannounced.

I have evaluated the evidence adduced in this case. I also considered the respective demeanours of the witnesses when they testified before court. It is clear to this court that the prosecution has established to the required standard of proof beyond reasonable doubt that it is the accused who killed the deceased. The accused was known to the children of the deceased, who included PW3. He was known to PW1, PW2 and PW4. The accused was the boyfriend of the deceased. However, at the material time their relationship had turned sour. The deceased told PW1, PW2 and PW4 that she had indicated to the accused that she wished to end their relationship. The deceased told the said witnesses that the accused was however reluctant to let go of the said relationship.

In fact, the accused threatened to harm the deceased if she attempted to end the said relationship. PW3 testified that prior to the fateful evening, the accused had gone to their home and assaulted the deceased. I observed the demeanour of PW3 when she testified before court. I formed the opinion that she was a honest and truthful witness. In fact, she was traumatised when she saw the accused in the dock. This court made a decision to exclude the accused from court and consequently the proceedings during the period that PW3 testified before court.

This court believed the testimony of PW3 when she stated that she saw the accused stabbed the deceased severally after he had provoked an argument with the deceased over the fact that PW3 had been instructed to serve him with water instead of the deceased herself serving the accused. As stated earlier in this

judgment, the evidence of PW3 is that of a child of tender years. It required corroboration. The corroboration was provided by the testimony of PW1, PW2, PW4 and PW6 who went to the scene immediately after the deceased had been stabbed. The deceased and her children had screamed seeking assistance from the neighbours. The deceased was found seated on her bed. She was bleeding from the stab wounds on her body. She told PW1, PW2, PW4 and PW6 that she had been stabbed by the accused. When post-mortem was performed on her body after her death, Dr. Riro Mwitwa observed that the deceased had sustained fourteen (14) stab wounds on her forearms, chest, abdomen, back and on her legs. The deceased died fourteen days after she was admitted at the Provincial General Hospital, Nakuru. During this period, the deceased told PW2 that it was the accused who had stabbed her over the soured relationship.

Another corroboration is provided by the conduct of the accused after the said incident. According to PW7 and PW8, the accused disappeared from the area after the said incident. PW7 and PW8 were unable to find the accused until the 17th November 2004 when the accused was arrested after the police were given a tip off by a member of the public. The accused's act of disappearing from the area after the said stabbing incident was not an act of an innocent person. Taking into account the totality of the evidence adduced by the prosecution witnesses, I do hold that the prosecution has established to the required standard of proof beyond reasonable doubt that it is the accused who intentionally killed the deceased. The accused stabbed the deceased because he was unhappy of the fact that the deceased had made a decision to leave him. The accused had previously threatened that he would harm the deceased if she dared leave him. I considered the defence of the accused. It is clear to this court that the said defence was crafted by the accused with a view of exonerating himself from the clear culpatory evidence adduced by the prosecution which proved beyond reasonable doubt that he had intentionally killed the deceased.

The three assessors who assisted this court during the hearing of this murder trial, all reached similar verdicts finding the accused guilty of murder. I have no reason to disagree with their finding. The accused is 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 13th June 2007

L. KIMARU

JUDGE