



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**CRIMINAL CASE 123 OF 2003**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN LEMERIA SANET.....ACCUSED**

**RULING**

The accused, John Lemeria Sanet 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 31<sup>st</sup> August, 2003 at Delamere Estate, Naivasha in Nakuru District, the accused murder Siduya Simongwa Kinyori (*hereinafter referred to as the deceased*). When the accused was arraigned before this court on 8<sup>th</sup> October 2003, he pleaded not guilty to the charge. The case was fixed for hearing on 29<sup>th</sup> March 2004. On that day, the hearing was adjourned to the 27<sup>th</sup> September 2004. No reasons were given why the hearing of the case was adjourned. On the 27<sup>th</sup> September 2004, the prosecution indicated to the court that they had no witnesses. The hearing was adjourned to the 3<sup>rd</sup> November 2004. On that day, the prosecution again applied for an adjournment on the grounds that they were unable to produce their witnesses before court.

The hearing was adjourned to the 8<sup>th</sup> March 2005. The prosecution gave the same reason *i.e.* that they were unable to avail their witnesses before court because the police could not trace the witnesses due to the then ongoing tribal clashes. Hearing was adjourned to the 13<sup>th</sup> October 2005. On that day, the prosecution again sought adjournment on the grounds that the prosecution witnesses were not present before court. The hearing was adjourned to the 21<sup>st</sup> March 2006. On that day, the prosecution again applied for adjournment for the reasons that the police could not trace the witnesses. The hearing was adjourned to the 29<sup>th</sup> September 2006.

On that day, the prosecution availed one witness before court. He was PW1 Dr. David Kuria. He testified that on the 16<sup>th</sup> September 2003, he performed a post-mortem on the body of the deceased. The body of the deceased was identified to him by two relatives of the deceased. He observed that the body of the deceased was that of an elderly African female. There were signs of early putrefaction on the chest and abdomen. On external examination, he observed that the deceased was bleeding from the left ear. The lower left jaw had been fractured and the joint connecting the jaw to the skull had been dislocated. The right clavical bone was fractured. The bone on the chest was dislocated. On internal examination, he found that the respiratory system and the stomach had undergone putrefaction. There was a fracture at the base to the skull. There was intracranial bleeding. He formed the opinion that the cause of death of the deceased was due to head injury. He was of the opinion that the likely weapon used was a blunt object. He produced the post-mortem report as *prosecution's exhibit No.1*. He testified that the accused was seen by Dr. Musalia on 5<sup>th</sup> September 2003. He formed the opinion that the accused was mentally fit to stand trial. No injuries were noted on the accused. PW1 produced the P.3 form on behalf of Dr. Musalia as *prosecution's exhibit No.2*. PW1 testified that according to the medical records, the deceased was the wife of the accused.

After PW1 had testified, the prosecution again applied for an adjournment. This court granted the adjournment to the prosecution but marked the said adjournment as the last adjournment. The hearing of

the case was fixed for the 12<sup>th</sup> October 2006. The accused was however not produced in court by the prison authorities on that day. The hearing was adjourned to the 14<sup>th</sup> February 2007. The prosecution availed one witness. He was PW2 CIP Josphat Ndung'u. He testified that at the material time he was attached to the Naivasha police station. On 31<sup>st</sup> August 2003 at 9.30 p.m., he received information that there was a dead body under the Karati Bridge along the Naivasha-Nakuru road. The said bridge is situated within the Delamere Estate. PW2 visited the scene and drew a sketch plan of the scene. The sketch plan was produced as *prosecution's exhibit No.3*. PW2 recalled that he saw the body of the deceased. There were injuries on the head and on the hands of the deceased. He testified that the deceased was identified as the wife of the accused. He recalled that his initial investigations established that the accused had quarrelled with the deceased on the morning before the deceased was found dead under the said Karati Bridge. He testified that the accused was arrested on suspicion that he was involved with the death of the deceased. PW2 testified that he was not the investigating officer of the case but only assisted the investigating officer during the initial period of the investigations when the body of the deceased was discovered and recovered. He recalled that upon concluding investigations at the scene he took the body of the deceased to Naivasha District Hospital mortuary to enable post-mortem to be performed. He reiterated that his role during the investigations were peripheral. He however testified that his initial investigations were unable to confirm the whereabouts of the deceased between 9.00 a.m., when she quarrelled with the accused and 4.00 p.m., when the body of the deceased was first sighted lying under the bridge.

After PW2 had concluded his testimony, the prosecution again applied for an adjournment. This court having granted the last adjournment on the 20<sup>th</sup> September 2006, declined to grant any further adjournment for the prosecution. This court ordered the prosecution to proceed with its case. Mr. Mugambi for the State closed the prosecution's case. This ruling is therefore written in pursuant to the evidence that was adduced against the accused by the prosecution witnesses. Does the said evidence adduced by the two prosecution witnesses establish a prima facie case on the charge of murder that would enable this court put the accused on his defence?

The prosecution established by the testimony of PW1 Dr. David Kuria that the deceased was killed after a blunt object was used to hit her on the head. He observed that the deceased had sustained a fracture at the base of the skull which caused intracranial bleeding leading to her death. He produced the post-mortem report as *prosecution's exhibit No.1*. He also produced the P.3 form as the *prosecution's exhibit No.2* which was filled by Dr. Musalia and which attested to the fact that the accused was mentally fit to stand trial. The testimony of PW2 CIP Ndung'u confirmed where the body of the deceased was recovered. He testified that the body of the deceased was recovered under the Karati Bridge within the Delamere Estate.

PW2 further testified that his initial investigations had established that the accused had quarrelled with the deceased (*his wife*) on the morning before the body of the deceased was found having been dumped under the Karati Bridge. He testified that he took the sketch plan of the area where the body of the deceased was recovered. He produced the sketch plan as *prosecution exhibit No.3*. PW2 testified that he was only involved with the initial investigations which were of peripheral nature. The main investigations were conducted by the DCIO, Naivasha. PW2 could not tell where the deceased was between the time she quarrelled with the accused at 9.00 a.m. and the time her body was first sighted by a member of the public at 4.00 p.m. That is the only evidence that the prosecution adduced before they were constrained to close their case.

It is clear that the above evidence adduced by the two prosecution witnesses only established that the deceased was killed and her body dumped under Karati Bridge. It does not establish who killed the deceased. The prosecution sought adjournments more than eight times on the grounds that they were unable to secure their witnesses. It is clear that even if this court granted more adjournments to the prosecution, the prosecution would not have been able to bring witnesses before court who would have established the guilt of the accused. From the testimony of PW2, it is apparent the accused was arrested because he had quarrelled with the deceased in the morning of the day before she was found dead under Karati Bridge. There was no cogent evidence which was adduced by the prosecution to connect the accused with the death of the deceased. The prosecution did not produce material witnesses in this case despite of the fact that the accused has been in remand for four years.

In the circumstances of this case, it is clear that the prosecution has not established a prima facie case that would enable this court to put the accused on his defence. The accused is thus acquitted of the charge of murder. He is ordered set at liberty and released from remand custody unless otherwise lawfully held.

It is so ordered.

**DATED at NAKURU this 13<sup>th</sup> day of June, 2007**

**L. KIMARU**

**JUDGE.**