

REPUBLIC OF KENYA

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

Criminal Case 94 of 2005

REPUBLIC.....APPLICANT

-VS-

MOHAMOOD MOHAMMED.....RESPONDENT

JUDGMENT

The accused has been charged for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63, Laws of Kenya. The particulars of the offence as stated in the information are as follows:

“On the 1st May, 2003 at Danyere Location of Balambala Division in Garissa District within the North Eastern Province, murdered GAVOI GURE”.

In his evidence, PW1 Ali Abdi recalled that on the night of 30th April, 2003 at around midnight, he heard a scream from the house that was ahead of him. In response, PW1 went to the place where the scream emanated from and saw the accused holding a panga. When PW1 tried to grab the panga, he was cut on the finger on the left arm and he raised an alarm before neighbours rushed to the scene. Among the neighbours who rushed there were: Ibrahim Abdi and Ali Abdi.

Subsequently, they jointly tied the accused with a rope before taking him to Danyore Police Station. Earlier, PW1 observed that her aunt viz, Gavoi Gure had multiple cuts on the two hands and the leg. Apart from the above, he also observed that she had a cut on the throat and that she was already dead. The PW1 was specific that when he entered the house of his aunt he only found her and the accused. After they reported the matter to the police station, PW1 and the reportees were given two police officers who accompanied them to the scene. The PW1 pointed out that by 9.00 am the deceased had already been buried. That was about eight hours after the incident. The PW1 conceded that prior to the incident, he did not know the accused. On the other hand, PW2 Ali Abdi Dubow introduced himself as a pastoralist living in Danyore area. The P2 recalled that on 30th April, 2003 he was informed by Ibrahim Abduo that the deceased had been killed by the accused. Subsequently, PW2 went to the burial site at around 9.00 a.m. and found that the burial was almost complete. According to PW3 the police went to the scene after about five days. In his evidence, PW3 Ibrahim Abdi recalled that on 30th April, 2003 at about mid-night, he heard a scream and he rushed to the scene where he saw the accused assaulting the deceased while using a panga. PW3 conceded that the deceased is his step-mother. While at the scene, PW3 saw the five children of the deceased. On the following morning, PW3 reported the matter to the police. Earlier, PW3 found the accused assaulting the deceased with a panga. PW3 recalled that during the attack, the accused was naked and after arresting and tying him with a rope they took him to the police station. The PW3 confirmed that they buried the deceased on 1st May, 2003 at around 9.00 a.m. In concluding his evidence, PW3 stated that he saw the five sons of the deceased running away from the scene. On his part, PW4 introduced himself as an administration police officer attached to the District Commissioner's Office, Garissa. He recalled that on 1st May, 2003 while he was attached at Danyere, he was approached by Ibrahim Abdi who reported that a woman had been killed by Mohamood Mohamed. In response, PW4 rang Balalmbala Police Station that instructed him to ensure that the body should not be buried till officers from that station arrive at the scene. Subsequently, the reportees took the suspect to PW4 after tying both hands with ropes. According to PW4, he observed that the accused was only wearing a kikoy and was shouting. On 2nd May, 2003, PW4 went to the manyatta where the incident took place and found

that the deceased had already been buried. In his medical evidence, Dr. Fredrick Owiti, a Consultant Psychiatrist, stated that on 9th June, 2003 he examined the accused and found him to be extremely dirty and that he could not even talk. After two weeks, PW5 saw the accused again and observed that he was just talking to himself. Besides the above, Dr. Owiti stated that he had earlier received a letter from Dr. Galgalo who informed him that the accused used to strip naked, talk to himself and refused to feed and bathe. Dr. Galgalo also complained to him that the accused was violent and destructive. According to Dr. Owiti, the accused was admitted at Mathare Mental Hospital till 6th December, 2005 when he was discharged as he was fit to plead. Dr. Owiti was of the considered opinion that the accused had chronic schizophrenia that is usually caused by change of bio-chemistry in the brain.

In his defence, Mohamood Mohamed Ali (hereinafter referred to as the accused) introduced himself as a Koran teacher from Garissa. The accused admitted that he knew the deceased as he used to teach her children. Besides the above, the accused stated that he could not remember anything that happened on 1st May, 2003. Specifically, the accused denied knowing whether he killed the deceased. That apart, the accused explained to the court how the deceased used to give him several meals in a day.

From the above evidence it is explicit that both PW1 and PW3 saw the accused at the scene of the incident while armed with a panga. Specifically, the PW3 saw the accused assaulting the deceased while using the said panga. Apart from the above, the evidence on record also show that by then, the deceased who was nearby was already dead and the accused was naked with the exception of a “**kikoy**”. Though the accused stated that he did not know what happened, the defence counsel viz, Ms Sirma urged this court to find the accused “guilty” but insane. The medical evidence of Dr. Owiti, Consultant Psychiatrist clearly show that the accused was suffering from chronic schizophrenia. In addition to the above, the conduct of the accused at the scene and also during the trial clearly show that he is mentally challenged. In view of the above, I hereby concur with the verdict of the assessors that the accused is “guilty” of murder, but insane. In view of the above, the accused is hereby committed to Mathare Mental Hospital for further treatment. In compliance with Section 166 (2) of the Criminal Procedure Code, I hereby direct that the case be reported to the order of His Excellency the President. Right of appeal explained.

Judgment read signed and delivered in the presence of the accused, M/s Sirma Defence Counsel; and Kivihia State Counsel.

Order: Assessors to be paid allowances.

MUGA APONDI,

JUDGE.

27TH SEPTEMBER, 2007.