



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 109 of 2005

REPUBLICPROSECUTOR

VERSUS

JOHN NJENGA KIMANI.....ACCUSED

RULING

John Njenga Kimani was charged with the murder of Nancy Njeri Njunge contrary to Section 203 as read together with Section 204 of the Penal Code, Cap. 63, Laws of Kenya

The information and particulars, dated 17/11/2005 read as under:

“John Njenga Kimani, between 25th and 27th July 2005, at Manyaka Province, murdered Nancy Njeri Njunge”.

The accused pleaded “Not Guilty” to the charge and in the course of hearing of the case for the Prosecution, eleven (11) witnesses were called and adduced evidence for the prosecution, at the end of which, the defence counsel submitted that there was no evidence on the basis of which the accused could be put on his defence. Counsel for the state replied to the defence submissions.

This Ruling is confined to whether or not the prosecution has made a prima facie case of murder against the accused to warrant his being put on his defence.

Counsel for both sides – Mr. Ndemo for the State and Mr. Kariu for the accused – made their submissions on 31/7/2007.

I have carefully gone through the evidence adduced by the prosecution through the 11 witnesses, and considered the submissions by the learned counsel for both sides. I have reached the following findings and conclusions.

The submissions for the Defence is briefly that from the evidence of the prosecution witnesses, none of the witnesses saw or witnessed the accused commit the said offence. This submission is uncontroverted and is a common ground. To that end, the prosecution’s evidence is at best circumstantial. There is no direct evidence on record to link the accused with the death of the deceased. All that the witnesses were able to demonstrate is that there had been homicide – killing – of the deceased. But the prosecution did not adduce any evidence to link the accused to the killing or death of the deceased. The burden of proof lies on the party that alleges and in criminal cases, such as this one, such proof must be beyond reasonable

doubt.

It is trite law that in all criminal cases the two fundamental ingredients - **actus reus** and **mens rea** – must be proved and **against** the accused person.

No evidence has been adduced by the prosecution to link the killing of the deceased to the accused.

It is the defence submission also that whatever evidence was given by the prosecution witnesses was inconsistent and contradictory. In support of that submission, the defence cited the evidence touching on the scene of crime and the position of the deceased body and the clothes allegedly worn by the deceased. Despite assertions by the prosecution witnesses that scene of crime photographs were taken, none was produced in evidence before the court. That would have reduced the contradictions in witnesses evidence. Unfortunately that did not happen.

On the second ingredient for all crimes, that is **mens rea** it is the defence case that there is no evidence to show why the accused would like to kill his wife, when all the witnesses, apart from the mother of the deceased, testified that the accused and the deceased had a happy marriage relationship and there were no quarrels. Further, the conduct of the accused in search of his wife – the deceased – after she went missing is not consistent with a motive to kill her.

In reply, the prosecution submitted that what the defence alleged to be inconsistencies were minor, and they do not go to the substance. This type of submission flies against the evidence adduced by the prosecution witnesses. How minor is a statement that there were 50 people at the scene of crime from one witness and that there were 500 people? The body of the deceased was said to have been in the river, next to the foot bridge used by the public to and from one side of the river to the other, yet for over two days no passers by had seen the body?

In conclusion, and all in all, from the evidence adduced by the prosecution. I find and hold that the prosecution has failed to prove its case to the requisite standard. There is no **prima facie** case against the accused person and the prosecution evidence does not warrant putting the accused on his defence.

Accordingly I find and hold that there is no case for the accused to answer.

He is therefore acquitted of the charge of murder, and he is hereby discharged, unless he is otherwise lawfully held.

DATED and delivered in Nairobi, this 8th Day of October, 2007.

O.K. MUTUNGI

JUDGE