



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL CASE NO. 112 OF 2003**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**MARY MUTHONI WAMBUGU ..... ACCUSED**

**R U L I N G**

Mary Muthoni Wambugu hereinafter referred to as the Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 12<sup>th</sup> day of June 2003 at Githathiini village in Nyeri District within Central Province, she murdered Stephen Wambugu Kiragu (hereinafter referred to as the deceased).

The prosecution has called a total of 7 witnesses. Briefly the Prosecution evidence was that on the night of 12<sup>th</sup> June 2002 at around 2.00 a.m. Samuel Munguria Kiragu (P.W.3) a stepbrother to the deceased heard the deceased who was drunk singing and walking towards his home. The deceased's home was about 150 metres away from that of P.W.3.

Sometime between 2.30 a.m. and 3.00 a.m., P.W.3 was alerted by his son one Alex Kiragu that there was "war" at the home of the deceased. P.W.3 walked to the home of the deceased and called out to him but there was no response. P.W.3 therefore went back to his home.

The next morning P.W.3 alerted the deceased's son James Maina Wambugu (P.W.2) and asked him to check on his father. P.W.2 went to the deceased's house at around 10.00 a.m. he found the deceased lying down facing down. He called the deceased but he did not respond. Believing the deceased to be dead P.W.2 informed P.W.3 that the deceased had been murdered. He went to Nyeri Police Station and made a similar report. P.W.2 waited at the police station for a vehicle until 5.00 p.m. He then went back to the deceased's home. He found the deceased still breathing relatives and neighbours were present with him.

The police then came with the Sub-Chief and took the deceased to Nyeri Provincial General Hospital

where he was admitted.

On 26<sup>th</sup> June 2002 Joseph Wambugi Wamweya (P.W.4) a relative of the deceased went to visit him at the hospital. He saw the Accused and one Esther Nyarwai seated at the bed of the deceased. He waited until the two women left after which P.W.4 went to the deceased and found him in a lot of pain. The deceased appeared to be having pain in the stomach. P.W.4 went and reported to the sub-chief that the Accused had given the deceased something which had worsen his condition.

A few days later on 30<sup>th</sup> June 2003, the deceased died. On 1<sup>st</sup> July 2002 Chief Inspector Patrick Karunyi (P.w.6) re-arrested the accused after she was apprehended and beaten by members of the public.

On 9<sup>th</sup> July 2002, P.W.2 identified the body of the deceased and a post mortem examination was carried out. The postmortem examination report which was produced by Dr. Abraham Gitangi (P.W.1) under section 33 of the Evidence Act showed that the deceased's cause of death was severe head injury with extra-dural haematoma following clot resolution and rebleeding into the extra-dural space.

Rose Wambui Wambugu (P.W.7) the deceased's minor daughter was asleep on the night of 12<sup>th</sup> June 2002 when sometime during midnight she heard her father talking loudly at the gate. She continued sleeping and did not hear anything else.

On the above evidence, the only thing that appears to implicate the Accused is the fact that she was living with the deceased at the material time. There is only hearsay evidence to the effect that one Alex Kiragu who unfortunately was not called as a witness heard a commotion which he described as "war" going on in the house. However this hearsay evidence was not consistent with the evidence of P.W.3 who walked to the deceased's house but heard no commotion. It is also not consistent with the evidence of P.W.7 who only heard her father talking loudly at the gate. Surely if there was "war" this little girl would have heard the commotion given that her sleep had already been disturbed by her father's loud voice.

The evidence of P.W.4 clearly shows the open bias and suspicion leveled against the Accused. It is the evidence of P.W.4 under oath that the Accused and one Esther Nyarwai gave the deceased something which worsened the deceased's condition. This is clearly inconsistent with the post mortem examination results which clearly revealed that the deceased's system were all normal except for the skull where there was the head injury which led to his death. The evidence of P.W.4 was therefore exaggerated to implicate the Accused.

The prosecution did not offer any evidence at all to confirm that the Accused did assault the deceased or that the Accused had any intention to harm the deceased or cause his death.

The fact that the Accused may have had the opportunity to commit the offence is not sufficient to prove that the Accused actually committed the offence. Of course a question arises as to how the deceased sustained his injuries and whether the Accused had anything to do with it. This was precisely the question the prosecution ought to have answered through their evidence but unfortunately left unanswered.

Moreover the evidence adduced was at variance with the charge sheet as the witnesses talked of 12<sup>th</sup> June 2002 and the charge sheet stated the offence to have been committed on 12<sup>th</sup> June 2003. I find that the evidence adduced by the prosecution is inconclusive and cannot establish any prima facie case against the Accused. Accordingly I find the Accused not guilty and acquit her of the offence under section 306 (1) of the Criminal Procedure Code. The Accused shall be forthwith released unless otherwise lawfully held.

***Dated signed and delivered this 23<sup>rd</sup> day of February 2006***

**H. M. OKWENGU**

**JUDGE**