



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

**CRIMINAL CASE NO. 117 OF 2003**

**REPUBLIC .....** **PROSECUTOR**

**VERSUS**

**MWAI NYAMU .....** **ACCUSED**

**RULING**

Mwai Nyamu, the Accused herein is arraigned before this court 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 night of 24<sup>th</sup> and 25<sup>th</sup> August 2003 at Kianganda village in Nyeri District within Central Province, he murdered Margaret Wangari Wachira (hereinafter referred to as the deceased).

A total of 9 witnesses have testified for the prosecution. The gist of their evidence was that on the afternoon of 24<sup>th</sup> August 2003, the deceased and the Accused were seen at Texas Bar in Othaya. They went into the Bar at different times. They did not sit together nor did they leave the Bar together. The two were also alleged to have been seen at Paradise Bar in Othaya at around 7.00 p.m. on the same night when they entered the bar together. The two were already drunk and stayed at Paradise bar for just about 20 minutes after which they left together.

The deceased was next seen by Isaac Kiruea Gakuru (P.W.6) a taxi driver who was on his way home at about 5.30 a.m. in the morning when he came across the deceased at the junction of Othaya, Kiraini and Mukurweini roads. The deceased who was half naked, was bleeding and appeared to be in a lot of pain. She claimed she had been beaten and raped by some men. P.W.6 alerted the deceased's brother Hosea Ndirangu Wachira (P.W.4) and Peter Kariuki Wachira (P.W.7) who went to the scene collected the deceased and took her to Othaya Sub-district Hospital where the deceased died on arrival. P.W.4 & 7 reported the matter to the police. Acting on information the two brothers with the assistance of the public arrested the Accused and handed him over to the police.

While it is alleged that the Accused was in the company of the deceased on the 24<sup>th</sup> August 2003, the evidence of the two witnesses i.e. Rose Kiragu Kirigo (P.W.1) who claimed to have seen them at Texas Bar and Lydia Nyambura Karindia (P.W.2) who claimed to have seen them at Paradise Bar was not consistent. According to P.W.1 the deceased went to Texas Bar alone at about 12.00 noon and stayed there upto 9.00 p.m., while the Accused went into the Bar between 2.00 p.m. and 3.00 p.m. and left at 7.30 p.m. According to P.W.1, the deceased and Accused were not drinking together.

The evidence of P.W.2 however contradicts that of P.W.1 as she claims the Accused and the deceased went to Paradise Bar at around 7.00 p.m. and left together about 20 minutes later. It is rather illogical that the deceased would have been at Texas Bar from 12.00 noon upto 9.00 p.m. and at the same time be seen at Paradise Bar at 7.00 p.m. The evidence of these two crucial witnesses is contradictory and leaves a doubt as to whether the deceased was really in the company of the Accused or whether they just happened to have been at the same place at some point in time. But even assuming that the Accused and deceased were drinking together, there is no evidence that the Accused participated in the assault perpetrated against the deceased. The deceased was able to talk when P.W.4, P.W.6 & P.W.7 went to her aid. She did not however identify the Accused person as her attacker. There is no evidence circumstantial or otherwise pointing irresistibly to the Accused having been the culprit. The possibility of the deceased

having been attacked by thugs or persons unknown to her cannot be overruled.

The truth of the matter is that no proper investigations were carried out in this case. The police merely went by the information which P.W.4 & 7 had come by and re-arrested and charged the Accused without properly investigating the case.

The result is that the evidence adduced before me falls far short of proving any case against the Accused. I find that no prima facie case has been established against the Accused. I therefore find him not guilty and acquit him under section 306 (1) of the Criminal Procedure Code of the offence charged.

The Accused shall be forthwith set free unless otherwise lawfully held.

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

**H. M. OKWENGU**

**JUDGE**