

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 31 OF 2003

REPUBLIC.....RESPONDENT

VERSUS

ALICE WANJIKU MUCHIRA.....ACCUSED

JUDGMENT

The Accused is charged with murder contrary to section 203 as read with Section 204 of the Penal Code particulars alleging that on the 6th day of October, 2002 at Kiang'ombe village, Kirinyaga District, Accused person murdered Sarah Nyawira Chomba.

Evidence is that the deceased was an infant of about nine months old and the Accused was the infant's mother living with her parents. Her parents had been educating her and she was in standard six when she got pregnant, left schooling and went to live as husband and wife with the boy who had made her pregnant, one Peter Kinyua Njagi, PW5. After some months of staying together, their relationship became sour to the extent of no longer living together and the Accused carrying her child returned to her parent's home where she lived with the child until the eventful day.

That day parents of the Accused left her at home with her child as they both went to church during the morning hours. While in the Church they received information that a child was missing at home. They returned home to find neighbours looking for the child while the Accused was explaining that the child had got lost. Parents joined the people who were looking for the child. They reported the matter to the police who told them to keep on looking for the child.

They kept on looking for the child until 11th October, 2006 when the area Assistant chief Justine Muriuki Rukenya, PW4, went with the Accused and her parents to Kerugoya Police Station. Her brother called Samlick Muthike PW7, and David Njoka Kiungi were also in the company. At the police station other people remained outside as the Accused was interrogated by a police officer and thereafter the Accused led the Assistant Chief, Samlick Muthike, David Njoka Kiungi PW6 and the Police from Kerugoya police station who seemed to have felt it not fit to come and give evidence in this case, to her home as her parents remained at the police station.

Not only did the Accused person show the people, she went with, where the child had been buried in a coffee plantation but also removed the soil from the place and uncovered the dead body of the child which she removed and it was taken to Kerugoya District Hospital Mortuary. Dr. Paul Mbalu who performed the postmortem formed the opinion that the cause of death was head injury from a blunt object or force. The Accused person was subsequently charged with this offence, Dr. Ibrahim Gatangi having certified her mentally fit and able to stand trial.

In her defence, the Accused told the court that after her parents went to church on 6th October, 2002 and left her at home washing her cloths, she started playing with her child, the deceased after washing the cloths. As she played with the child, the child fell down and she thought the child had died. Since she was shocked, she decided to go and bury the child. She said she was fearing her father could come and beat her up. She admitted having shown people who included the police where the child had been buried and the body of the child was recovered. She claimed it was not her intention to kill the child.

As I have remarked somewhere, this is a case where police from Kerugoya police station where the case

was handled have not seen it fit to come to court to give evidence. This court is in the darkness as to the reasons for that type of conduct by the police. May be because they are rewarded with re-trials at the expense of the Accused person's constitutional and human rights.

May that be what it may, this is not one of those cases I do dismiss. Here the evidence adduced is overwhelming that the deceased was killed by the Accused person. She asked this court to find that she did not do it intentionally. Her relatives who gave evidence were reluctant to say how the accused was relating to her child. Perhaps the prosecution was not keen in bringing that out. But despite that situation, the conduct of the Accused speaks by itself. If it is true that the child fell down accidentally and died, the shock the accused claimed to have had could not have prevented her from telling people the truth right from the beginning. She could not have kept on deceiving people, as she did for six days that the child had simply got lost. She could not have proceeded to bury the child as she did at such a lightening speed and without the knowledge of anyone else. As the learned state Counsel m/s Ngalyuka said, intention to murder the deceased can be read from the behaviour of the Accused person. That behaviour indicates that the accused had the intention to murder the deceased and conceal her murderous act for people to believe her that indeed the child got lost. I do not believe her when she says that she had no intention to kill the deceased. None of the three assessors believed her. Instead they were all unanimous that the Accused was guilty as charged. I have no good reason to disagree with them.

Accordingly, I am satisfied that the prosecution has proved this case against the Accused person beyond reasonable doubt. I find the Accused person guilty of the offence as charged and convict her.

Dated this 31st day of March, 2006.

J. M. KHAMONI

JUDGE