



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Case 18 of 2005

REPUBLIC.....PROSECUTOR

VERSUS

ANN WANGECHI KIMANI.....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 18th day of March, 2005 at Kagati village in Nyeri District within central province, murdered Grace Nyawira Murefu.

The deceased, a minor about 1½ years old, was in the morning left by her mother with the child's paternal grandmother as the mother of the child went to her employer's home to work, the father of the child having left for his work earlier. Parents of the child lived in their own homestead separate from that of the paternal grandparents of the child.

After the child's grandmother had fed the child together with that child's elder brother who was also a minor, the grandmother, Mary Muthoni Nderi, PW2, went to work in her firm where her son Michael Mutitu, PW3, was working. She left the children at her home where her ailing husband was.

But as the children played at home, the Accused person, another daughter in law of Mary Muthoni Nderi and a neighbour in an adjacent homestead, went to the home of Mary Muthoni Nderi and lured the children to her home where they continued playing. At that time Mary Muthoni Nderi was still working in her garden. But her son Michael Mutitu who had returned home and was working near his house said he saw the accused go to her homestead with the children and, like his father Samuel Nderi Murefu, PW4, subsequently heard the children playing in the "Accused's homestead.

Later at lunch time when Mary Muthoni Nderi returned home to give the children food, the deceased could not be seen. They started looking for the deceased up to the home of the Accused who did not prove to be useful in the inquiry. Instead she tended to be hostile trying to direct them to other homes where Mary Muthoni Nderi and her husband did not believe the child had gone.

Somehow, as the search for the deceased child continued, the Accused person was seen going to her garden, on the other side of her home, carrying something in a sack and also carrying a "jembe". She later returned into her home. Michael Mutitu and Mary Muthoni Nderi each claimed to have separately seen the accused carrying the sack to the garden. They became suspicious and when Michael Mutitu gave the information to his father, Samuel Nderi Murefu, his father instructed him to go to the garden where the accused had gone with the sack to check whether he could find anything.

Michael Mutitu went and on discovering a freshly dug up spot and going near to remove some soil, he saw the legs of the deceased. He was shocked and left that place screaming saying that the child was in the Accused's garden killed. As Michael Mutitu passed through the home of the Accused to return to his home, the Accused was frightened and started running away from her home in an effort to disappear. But Michael Mutitu realising what the Accused was trying to do, closely pursued her shouting for assistance to arrest her because she had killed a child.

Neighbours and members of the public responded and surrounded the place where the Accused had hidden herself and flashed her out, arresting her and taking her to the police as other neighbours who included the mother of the deceased who had rushed home when hearing screams, uncovered the shallow grave where the body of the child was and removed it. The child's mother Rose Mumbi, PW5, did it and rushed to hospital with it thinking life could be restored. But the child was confirmed dead. Left the matter with the police who visited the scene and subsequently charged the Accused with this offence.

Dr. Kariuki Kahindi, PW1, who performed the postmortem on the body of the deceased told the court that the white parts of the eyes were red. The lips bluish. There was a bruise going almost round the neck and bruises on the jaw joints. In the brain, blood vessels were full of blood. The doctor formed the opinion that the cause of death was cardiopulmonary arrest due to hypoxia due to cord strangulation.

In her defence, the Accused person asked the court to acquit her stating that she did not murder the deceased and did not therefore accept the evidence prosecution witnesses gave in this case against her, adding that the evidence was hearsay.

In my opinion, that defence does not cast any doubt in the prosecution's case as seen from the evidence on record. The Deceased was a minor of only 1½ years old who knew nothing about committing suicide, and if by any chance the Deceased could hang herself by a cord, she could not have removed herself from wherever she was to go and bury herself in a shallow grave in the garden of the Accused that day. The Accused was the last person to be seen with the Deceased alive both at the home of Mary Muthoni Njeri and at her home where she was the only adult with that child. She was seen going to her garden with something in a sack which she buried at a place from where immediately thereafter the dead body of the Deceased was recovered and as a result of that discovery by other members of her extended family, the Accused person started running away in an effort to escape. She was chased and arrested and handed over to the police who charged her with this offence.

Assessors in this case are unanimous that the Accused person is guilty of the offence as charged. I have no good reason to disagree with those assessors as I am satisfied that the prosecution has proved this case against the Accused person beyond reasonable doubt. I therefore also find the Accused person guilty as charged and convict her.

Dated this 31st day of March, 2006.

J. M. KHAMONI

JUDGE