



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Case 24 of 2003

REPUBLIC.....PROSECUTOR

VERSUS

PAUL MWANGI NJAU.....ACCUSED

J U D G M E N T

Paul Mwangi Njau 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 24th day of April 2002 at Kamuiru village in Muranga District within Central Province he murdered John Njau Mwangi (*hereinafter referred to as the deceased*).

This being a criminal case, the burden is entirely upon the prosecution to prove beyond reasonable doubt that the Accused did commit the offence. If there is any doubt the benefit must go to the Accused who must then be acquitted.

Five witnesses testified on behalf of the prosecution. Their evidence was briefly as follows: -

The Accused is the son to the deceased. They were living together in one homestead together with James Mwangi Njau (P.W.5) another son of the deceased. Each of them had a house in the homestead. The homestead was neighbouring that of the deceased's brother Peter Kinuthia Mwangi (P.W.4) who is the husband to Catherine Wambui Kinuthia (P.W.1).

On the material day i.e. 24th April 2002 at about 4.00 p.m, P.W.1 was at her shamba about 70 meters away from her home when she heard the deceased screaming. She heard him utter the words "*oui why have you killed me*". P.W.1 screamed asking the deceased what was happening but the deceased did not respond. P.W.1 moved to her cow-shade to keep the grass she was carrying. When she reached the cows-shade she heard the Accused's voice saying "30 years." She then saw the Accused walking towards the road. She did not notice the Accused carrying anything.

P.W.4 who heard his wife's scream ran back home. She asked her what was happening and she pointed towards the deceased's home where people had gathered. P.W.4 went to the deceased's home where He found the body of the deceased lying face down with injuries on the head and hands. The deceased was apparently already dead.

In the meantime, Agnes Wandia Njoroge (P.W.2) a cousin to the deceased was on her way home from her shamba. She was just about to reach the home of the deceased when she heard screams and she ran

towards the direction of the screams. She then saw the Accused appear on the road. The Accused was crying “*Oui what have I done over land.*”

P.W.2 asked him what he had done and Accused responded that He had done something bad. P.W.2 asked him what He had done and He told P.W.2 to go and see. P.W.2 noticed that the Accused was carrying a piece of a heavy Iron Bar. When asked where He was going, the Accused responded that He was taking himself to the police. P.W.2 then proceeded to the home of the deceased where she found the body of the deceased lying down some metres away from his house.

According to the evidence of P.W.5 the deceased had a 3.8 acre family land, which had been sub-divided into 3 portions, the deceased having 1.8 acres whilst the Accused and P.W.5 were each to have 1 acre. The deceased had however sold his 1.8 acres without consulting his sons. On 22nd April 2002, the Accused and P.W.5 learnt that the deceased had sold the 2 acres which was supposed to be for them. Accused and P.W.5 went to the Lands Office and confirmed that the deceased had indeed sold the land. They then went to the D.O.’s office where they lodged a complaint. They were advised to go back on 24th April 2002. They went back and found the Chief who gave them a letter to take to their father summoning him for a meeting the following Monday.

They proceeded home with the letter which was being carried by the Accused. Immediately on arrival at the home P.W.5, went to the shamba to look for firewood. It was while He was at the shamba that he heard screams and ran back home only to find his father lying down on his stomach outside his house with an injury on his hand. The only other witness was Naomi Njeri (P.W.3) the deceased’s first wife who identified the body of the deceased for purposes of a post mortem examination.

The Accused gave an unsworn statement in his defence. He testified that He was walking back home when He heard screams from a distance. When He arrived home He found his father lying down. There were about 15 people in the home including his grandparents and uncle. No one could however explain to him what had happened. He therefore went to the chief and the police station and made reports. While at the station a telephone call was received there as a result of which the officers arrested the Accused. From the evidence adduced there was no eye witness who actually saw what happened to the deceased. The evidence against the Accused is purely circumstantial based on the acrimonious relationship he had with the deceased arising from the fact that the deceased had sold family land meant for Accused and his brother, and also the allegation that the Accused was seen by P.W.1 and P.W.2 coming from the direction of the deceased’s home shortly before the deceased was found dead, and the allegation that the Accused was overheard making certain incriminatory remarks.

The evidence against the Accused person being purely circumstantial the rule as set out in the case of **Republic v/s Kipkering arap Koske & Another (1949) 16 EACA 135** is that:

“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”

In this case, there is no evidence regarding the cause of death of the deceased as the Doctor who performed the postmortem examination was not called to testify. The evidence of P.W.1 & P.W.2 merely raises suspicion that the Accused might have assaulted his father. However suspicion no matter how strong is not evidence. It was alleged that the Accused was seen with an iron-bar, however, the same was not produced in evidence nor was it in any way proved to be the murder weapon. There was further no evidence as to how the Accused was arrested as no police officer was called to testify. I find that the evidence adduced was not such as can be said to lead irresistibly to the conclusion that the deceased’s death was as a result of an act or omission on the part of the Accused.

I find that the prosecution has failed to prove the case against the Accused.

I therefore concur with the unanimous opinion of the Assessors that the Accused person is not guilty.

Accordingly I acquit the Accused of the charge under section 322 of the Criminal Procedure Code. The

Accused shall be set free unless otherwise lawfully held.

Dated signed & delivered this 26th day of June 2006.

H. M. OKWENGU

JUDGE