



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Criminal Case 25 of 2003**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**DAVID MAINA IRUNGU..... ACCUSED**

**J U D G M E N T**

David Maina Irungu (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 27<sup>th</sup> day of June 2002 at Mukui village in Kirinyaga District within Central Province he murdered Irungu Kariuki Ngoru (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.

The prosecution called 6 witnesses. Briefly their evidence was as follows:-

On the 27<sup>th</sup> June 2002 Francis Maina Migwi (P.W.2), Nicholas Mwai Kihoru (P.W.3), and the deceased contributed some money and bought a rabbit which they prepared and ate at the home of the deceased.

Thereafter the three friends remained outside the house resting. The deceased was lying down on a jacket whilst P.W.2 and P.W.3 were resting on a chair opposite him.

At about 1.00 p.m. the Accused and one Christopher arrived at the home of the deceased. The deceased invited them to get a chair from inside the house and join them outside. The accused asked the deceased where the fire-wood which Accused was to split for his grandmother was. The Accused was shown where the fire-wood was.

The Accused then left and went to the house of his grandmother Penina Wambui Kariuki (P.W.1) from where he collected an axe. He went back to the home of the deceased and started splitting fire-wood about 3 steps away from where the deceased and his friends were seated. The deceased cautioned the Accused not to split the fire-wood near where they were. In response the Accused asked the deceased whether he thought the Accused could cut someone. The Accused lifted up the axe saying he could cut them at once but the others cautioned him not to play with the axe. The Accused furiously cut the fire-wood twice using a lot of force. When he swung the axe the third time, P.W.2 & P.W.3 were surprised to see him cutting the deceased with the axe. The two screamed and ran away shouting for help.

Ephraim Maina Mwangi (P.W.4) went to the home of the deceased in response to the alarm. He found the deceased's body with cuts on the head lying outside his house. P.W.4 went to Sagana Police Station where he reported the matter.

P.C. Lawrence Mwiti (P.W.5) who was then attached to Sagana Police Station together with one Cpl. Muinde proceeded to the scene and took the body of the deceased to Muranga District Hospital mortuary. On the same day the two officers arrested the Accused from Karuthi Chief's Camp where the accused was being held.

On the 1<sup>st</sup> July 2002 Dr. Abraham Gatangi (P.W.6) carried out a postmortem examination on the body of the deceased. He noted that the body had a big cut wound on the right temporal bone of the skull

which was touching on the right temporal lobe of the brain. There was also a big deep cut wound across the nose involving both eye-sockets, and another big cut wound on the right jaw internally. Dr. Gatangi formed the opinion that the cause of death was severe head injury due to sharp trauma.

On the 6<sup>th</sup> July 2002 Dr. Abraham Gatangi examined the Accused and found that he was experiencing auditory and visual hallucinations. He formed the opinion that the Accused was suffering from simple schizophrenia which is a mental illness. He thought that the Accused was not mentally fit to plead. The Accused's grandmother (P.W.1) also testified that the Accused had been suffering from a mental illness and had been under medication for a long time prior to this incident.

In his defence the Accused gave an unsworn statement in which He maintained that he was sick and did not know what was right or wrong. The fact that the Accused attacked the deceased with an axe and caused him fatal injuries comes out clearly from the evidence of the two eye witnesses P.W.2 & P.W.3. The evidence of the eye witnesses is consistent with that of P.W.1 from whom the Accused had collected an axe to go and cut fire-wood. The evidence of the two eye-witnesses is also consistent with the evidence of Dr. Abraham Gatangi who examined the deceased and noted several deep cut wounds on the head and concluded that his cause of death was as a result of severe head injury due to sharp trauma. There is therefore overwhelming evidence that the deceased died as a result of being cut with an axe by the Accused.

The Accused has however put forward the defence of insanity claiming that He was sick and did not know what he was doing. His defence appears to be supported by the evidence of his grandmother (P.W.1) who stated under cross examination that the Accused had been suffering from a mental illness for a long time and was under medication. Dr. Gatangi (P.W.6) who examined the Accused after the incident also confirmed that the Accused was suffering from simple Schizophrenia which is a mental illness. Indeed the Accused was on the 17<sup>th</sup> July 2003 committed to Mathare Mental Hospital under Section 162 (4) of the Criminal Procedure Code. There is therefore sufficient evidence to show that the Accused was suffering from a disease which affected his mental capacity. I am satisfied that the defence of insanity as provided under section 12 of the Penal Code has been established as it is evident that the Accused was not criminally responsible for his actions as he was suffering from a disease of the mind which made him incapable of understanding what he was doing.

I therefore concur with the unanimous opinion of the assessors and make a special finding under section 166(1) of the Criminal Procedure Code that the Accused person is guilty but insane.

I further direct that the case shall be reported to the president for action under section 166(3) of the Criminal Procedure Code. In the meantime the Accused shall be detained at Kamiti Maximum Prisons.

***Dated, signed and delivered this 5<sup>th</sup> day of June 2006.***

**H. M. OKWENGU**

**JUDGE**