



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Case 10 of 2004

REPUBLIC.....PROSECUTOR

Versus

RAYMOND KIMANI NJENGA.....ACCUSED

JUDGEMENT

The Accused in this case was charged with murder contrary to section 203 as read with section 204 of the Penal Code. It was alleged in the charge that on the 25th day of January, 2004 at Kiorugari Village in Kirinyaga District in Central Province, the Accused murdered Mary Wangari Simon.

Eight Prosecution witnesses gave evidence the prosecution's case briefly being that the Deceased who was married to the Accused for six years and they had one child, was not living happily with her husband. This time following their disagreement the Deceased had gone to her parent's home-where she stayed until the fateful day when the Deceased took cloths and went to wash them at a nearby river. That was in the morning about 9.00 a.m. and she was alone.

Later a boy called Reuben Muriithi Wangui went to the river. He gave evidence as PW5 and while from his evidence he said he went with Carolyne Wanjiku Wamaitha who gave evidence as PW6, Carolyne Wanjiku Wamaitha in her evidence said she went alone. PW5 said he went to the river because he took more cloths to the Deceased to wash.

I must point out that here, the Prosecution's case was not consistent. The mother of the Deceased gave evidence as PW3. Her name is Esther Wangui and in her evidence she told the court that on that day she left her home in the morning going to a place she did not disclose. She said she was therefore not present when the Deceased went to the river to wash cloths. She was not therefore present to participate in activities relating to the taking of the Deceased to hospital and the arrest of the accused.

But according to the evidence of PW5 he had returned to his home from the river and while at home he heard screaming from the river. He first run to the river to find out what had happened. He found the deceased lying on the ground bleeding. Run back home. He first told his grandmother Helen Wamaitha Paul that the Deceased was lying down on the ground at the river bleeding. He then went and told his mother the same. Helen Wamaitha Paul gave evidence as PW4 while the mother of PW5 gave evidence as PW3. While he was at home, someone called Oboyo who had a bicycle gave a lift to PW3 and the two went to the scene as PW5 remained at home.

According to PW4, she was at home preparing to go to a market when PW5 went and told her that the Accused was troubling the Deceased at the river. PW4 claims that she told Carolyne Wanjiku Wamaitha,

PW6, to accompany PW5 back to the river to see what the position was - and that after the two had gone, PW5 returned and told her that the Accused was still troubling the Deceased. As a result PW4 went to the River. Found the Deceased safe and sound at the river continuing with the washing of clothes. Other people PW4 found there were PW6 and a grandson of PW4 called Kambogo. PW4 when inquiring about the Accused she was told that the Accused had run away from the river when he saw Kambogo. PW4 claimed that before she left, she told Kambogo and PW6 to guard the Deceased against the Accused.

PW5 in his evidence did not mention Kambogo. Yet he told the court that it was during his first visit to the river when he took cloths to the river that the Accused was there conversing with the Deceased talking of going back to their matrimonial home. As PW5 was leaving to return home, the accused had already, on his own volition, started also going away. PW5 therefore left the Deceased and PW6 only at the river and did not talk of having seen the Accused troubling the Deceased and does not talk of having given such information to PW4.

It was after PW5 had reached his home that he heard screaming from the river where he had been. Returning there, he found his sister, the Deceased, lying down bleeding from her head. He then run back home to inform his grandmother and his mother. He had not, this time, seen the Accused at the River and this witness did not disclose whether there was anyone else at the scene by that time. At home, one Oboyo gave PW5's mother a lift on a bicycle as earlier on stated.

PW3, PW4, PW5 and PW6 are the Deceased's family members. Among the four, it was PW6 only who talked of a knife – she claimed the Accused used to stab the Deceased. The other there apparently did not see it yet from the evidence of PW6 she appears to have been carrying that knife openly from the time the knife was found. after claiming that she saw the Accused person stab the Deceased near the left ear and run away into a maize plantation. She said she was in the group of people who pursued the Accused into the maize plantation and apprehended him.

Although her evidence shows that she was in a group of people, and these ought to have been local people who knew each other including PW6, she is the only witness who testified was in the arresting group of people. Concerning the knife therefore she said:

“One of the people we were with had given me the knife Kimani had used to stab Wangari. By then we were where we found Kimani. I do not remember his name. The village in charge took it from me and I went with him and handed over to the Police.”

During Cross-examination she said;

“This is the knife which Kimani had and we recovered it from him and took it to the Chief's camp.”

She claimed it was the knife the Accused had used to stab the Deceased. From her evidence I had got the impression that the Village In Charge was in the group which pursued and arrested the Accused. But when the said Village In charge Maxwell Kamau Munyi who gave evidence as PW7 told the Court that he got information from someone that PW6 had a knife which had been used to stab the Deceased and that following that information he went to the home of PW6 and took possession of the knife and latter took it to the Chief's camp, I warned myself to be careful with the evidence of these witnesses. They will connect unconnected facts and make it look as if those facts are connected Moreover if this is the knife the Accused also talks about, then the situation is confused concerning the knife, PW6 being in the vehicle which took the Accused and his wife's body to Chief's Camp.

Other evidence of PW6 also worthy noting bearing in mind that these are witnesses who connect facts that are unconnected and I should add that they also disconnect facts that are connected so that it is not easy to get the whole truth out of their mouths, is that contrary to what I have said that PW4 and PW5 told the court that PW6 went to the river with PW5, PW6 maintained she went to the river alone. Of Course she knew the Accused very well and the Deceased was her close relative although the relationship was not clearly disclosed.

She lives in Nairobi but on the 25th January, 2004 she was at home Kiorugari Village. She said she went to the river to wash cloths and seems to indicate she went with the Deceased. While they were at the river, the Accused came and started abusing the Deceased as the Deceased requested him to go and talk to her mother. The Accused reacted that if the Deceased did not agree to go with him to their matrimonial home he will kill her. The Accused started beating the Deceased and therefore PW6 sent PW5 to go and inform people at home. PW6 said that Muriithi PW5, had gone to the river latter and found PW6, the Accused and the Deceased at the river. PW6 said as a result her grandmother Helen Wamaitha Paul PW4 went to the river in the Company of Mbogo. But when the accused saw them he went away. PW5's evidence said nothing to that effect and even PW4 herself did not say went to the river with Mbogo. PW4 in her evidence, went alone and found Kambogo not Mbogo, at the river. If Kambogo is Mbogo, no effort was made by the prosecution to let the court know that connection.

Back to the evidence of PW6, since the Accused went away, PW4 also returned to her home. Then the Accused returned to the scene armed with a knife, which apparently was being openly displayed and seen by every body at the river like the Deceased, PW6 and Mbogo. But PW6 does not show the three had any re-action to the sight of the Accused who was armed with a knife.

PW6 continued to say that when the Accused reached the river, he went straight for the Deceased as she was bending washing cloths and held her head and stabbed her with the knife and run away – as PW6 watched and latter screamed and the Deceased fell down. PW6 screamed following the Accused who was running away. Other people came and joined her to pursue the Accused who had entered a maize plantation where, after two to five minutes they found him lying down complaining of stomachache because he had taken some medicine and there was a bottle beside him. The people she was with apprehended him. None of them came to give evidence. From the time of the attack up to the arrest, the duration was only three to five minutes.

During cross-examination, PW6 changed to say that she went alone to the river and found the Deceased and the Accused there. She now said she went to the river when her grandmother sent her to go there telling her that the accused was there. She found the Deceased and the Accused talking, and heard the Accused telling the Deceased that unless they returned to their matrimonial home he would kill her.

This witness told the court she had known the Accused for two months prior to the incident and although the Accused had married the Deceased, PW6 said had talked to him only once and did not have any relationship with him and denied the Defence Counsel's suggestion that the Accused had been her boyfriend who wanted to marry her but changed his mind to marry the Deceased and that as a result She held a grudge against the Deceased and the two had even had a fight once over the Accused.

Surprisingly when the learned counsel for the Accused was touching on that love aspect of the case, he just did it superficially and passed on quickly to other aspects of the case, yet this PW6 was the star witness in this trial and Mr. Mahinda for the Accused ought not to have left her off so lightly.

I say so because when the accused was put on his own defence, I could not help feeling that Mr. Mahinda had not done justice to the Accused's defence and I say this with all due respect. In fact it was apparent that even the prosecuting State Counsel M/s Ngalyuka and the Assessors were surprised to hear a defence which prosecution witnesses, particularly Pw6, had not been confronted with and it was more surprising that only close family members were brought to give evidence apart from the doctor and police officers. Those who actually arrested the Accused none of them was brought and the claim of PW6 that she was in that group has to be taken with a bit of salt. Some close family members like Kambogo and Mbogo and perhaps Oboyo were never brought to testify.

The Accused who denied committing the offence in his defence told the court that the witnesses who told the court that he had disagreed with his wife, the Deceased, and as a result she was living with her parents were telling the court lies. He said the two had no problem and were living together with their one child as at the 25th January, 2004 and that morning they left their matrimonial home together going to the home of the Accused's inlaws.

On their way they crossed a river where they found PW6 with clothes in a basin and Mbogo, a brother in law of the Accused was also there. They greeted each other and passed. Behind them PW6 made a sound as if to insult them- some sneering expression. But they did not mind. The deceased told the Accused that she still had a problem with PW6 because PW6 still nursed the jealousy she entertained when the Accused married the Deceased instead of marrying her.

But as they continued with their journey before they reached the home of the Deceased's parents, they met with PW5 who requested the Accused to buy him a cake. This made the Accused part with the Deceased as she proceeded with the journey to her parent's home while the Accused and PW5 went towards shopping centre to buy a cake, PW5 having told the Deceased that there was no body at home.

On their way to the shops the Accused and PW5 met with Mbogo who discouraged them from their journey. Nevertheless the Accused gave PW5 shs.50/= to go and buy cake as the Accused now in the company of Mbogo, his brother in law, went to the home of the Accused's parents in law where they reached and found the Deceased had found where the key to the house was and had opened and prepared the house. PW5 returned and found them there and told the Deceased the work her grandmother, who had met PW5 at the shopping centre, wanted the Deceased to do.

After the Deceased had prepared some food and they had eaten, she took her grandmother's cloths to go and wash and went with the clothes to the river to wash.

After about one hour the Accused and Mbogo heard screaming from the direction of the river and the Accused went in the company of Mbogo and PW5. When they reached the river they found PW6 holding a knife with a blue handle. She went towards accused exclaiming that he was the one who had caused all that. She said so while crying and screaming and the Accused was not understanding what was going on.

When PW6 reached the Accused he held her and in the process the Accused was stabbed on his left hand as he tried to disarm her. The Accused showed the court a scar of a healed wound on his left hand and this may explain the sickness PW6 claimed the Accused had when arrested. According to PW8 Inspector Joseph Toroitich who was in charge of this case at Wanguru Police Station, he found the Accused and the body of the Deceased at the Chief's came and took the Accused and the body to Kerugoya District Hospital where the body of the Deceased was put in the hospital mortuary as the Accused was admitted in the hospital for four days. The prosecution, through the police, was careful to disclose what the accused was suffering from. Had it been the taking of medicine as PW6 claimed the police were unlikely to have failed to highlight it – bringing into the Court the bottle PW6 claimed was found where the Accused was lying in the maize plantation. The doctor who signed Exhibit 2, the P3 Form, was only concerned with the mental status of the Accused; and that was on 31st January 2004 probably after the Accused had been discharged from hospital, and during cross examination defence counsel never felt it important to cross examine the witness concerned about injury upon the Accused.

That confrontation between the Accused and PW6 was at the River. The Accused went on to say that after PW6 had stabbed him he saw where a group of women was some 30 metres away. He had disarmed PW6 and taken possession of the knife and as a result PW6 was running away as Mbogo and the Accused tried to follow her to find out what the problem was.

The Accused continued that that PW6 met a group of people attracted by her screaming and told them something the Accused did not know. They started going towards Mbogo and the Accused and when they reached Mbogo who was in front, they passed him and went towards the Accused and apprehended him. Took him towards the river past the place where the Accused had been when stabbed by PW6. This explains PW6's claim that it took them three to five minutes to arrest the Accused. At the river, more people came. The group of women 30 metres away were still there. That is when the Accused came to learn his wife was lying down where those women were. Some of those people said the Accused be beaten as others said they wait for Mbogo. Some of them were already armed with stones ready to stone the Accused who was hit by one of the stones and Mbogo had to intervene and those saying Accused should not be beaten prevailed.

He was taken to a motor vehicle where he found his wife's body and some other people who were also hostile and still wanted to beat and some managed to beat him but Mbogo did his best telling them that the Accused was not responsible for the injury on his wife.

On the motor vehicle they were taken to the Chief's camp Kimbimbi in the company of the Village In Charge Maxwell Kamau Munyi, Carolyn Wanjiku Wamaita (PW6), Mbogo, Kambogo and Waweru the person who collected the knife from where the Accused had left it when the Accused was hit by a stone. The accused did not clarify whether exhibit 3 was the knife he was talking about. It went back into the hands of PW6.

From Kimbimbi chief's Camp, the Accused and the body of his wife were taken by the Police to Kerugoya District Hospital and here what the Accused said agrees with what Inspector Toroitich told the court that the Accused was admitted in the hospital for four days and the body of his wife in mortuary.

According to the Accused, up to the time he was admitted in hospital, the police had not arrested him and the Police never told the Court when they arrested him. It was latter, on a date the Accused seems to confuse, that P.C. Meli handcuffed him telling him he was under arrest while still in hospital ward. That was a short while after Kambogo who had received the information had visited the Accused earlier in the company of Mbogo, Peter Kariuki a brother to the Accused and a friend Norbert Kinyua, and told the Accused that he the Accused had been charged with the murder of his wife. Then Mbogo told the Accused that he would not go to court to testify because he does not want to be seen to disagree with his family while at the same time he does not want to go to Court and tell lies. That is he could have been seen to disagree with his family if he gave evidence in support of the Accused and he would tell the court lies if he were a prosecution witness.

The Accused concluded that is why he is in court charged with the murder of his wife, an offence he said he did not commit adding he could not kill her, they have lived together for many years, it was said six, and he loved her very much as there was no problem between him and his wife.

The Accused said he was calling no witness, and that is the defence I have said was not put to prosecution witnesses by counsel defending the Accused persons. The Accused had no blame and it was good that he said it himself without keeping quiet with it.

Assessors heard it and at the end of the day they were unanimous that the Accused is not guilty. I have no reason to disagree with the assessors because that defence casts doubt on the prosecution's case from the face of it and when inconsistencies and contradictions in the prosecution's evidence are in addition considered, the conclusion is that the prosecution had not proved the charge of murder against the Accused person.

From the above therefore, the prosecution's case is hereby dismissed and the accused acquitted under enabling provisions of the Criminal Procedure Code. He be released forthwith unless lawfully detained in some other cause.

Delivered, dated and signed at Nyeri this 6th day of July, 2006.

J. M. KHAMONI

JUDGE

Present:

M/s Ngalyuka for the Republic

Mr. Mahinda for the Accused

The Accused In The Dock