



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS**

Criminal Case 10 of 2001

REPUBLIC PROSECUTOR

VERSUS

PETER MUTUKU KAMAMA ACCUSED

J U D G E M E N T

Peter Mutuku Kamama, the Accused herein, is charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code.

The particulars of the offence are that on 4.11.1999 at Kathangathini village, Matuu location Machakos District, he murdered Wambua Nzomo.

Accused denied the offence and made prosecution called a total of 5 witnesses in support of their case.

Elizabeth Kanini Kamama, (P.W.1) is the mother of the Accused. She recalled that on 3.11.1999 she was at her home with all her children who included the Accused. The deceased, Wambua, who was the Accused's friend since childhood visited Accused. Wambua later retired to bed with the Accused at night. They slept in the house where Accused used to sleep. Before Accused went to sleep P.W.1 administered medicine to him as he was on medication.

In the night the Accused called P.W.1 and informed her that he had killed a snake in his house. P.W.1 came out of her house with the other children, were scared and ran off to spent the night at neighbouring home. The next morning, P.W.1 went to the headman to ask him to go and find out what had happened in Accused's house. On going to the home with Muli, the Assistant chief, they went to Accused's house and found Wambua lying dead on Accused's bed. The deceased had blood on the face and chest. According to P.W.1, the Accused had a mental illness that had made him drop out of school. She did not witness the murder but believed the Accused committed it and claimed to have killed a snake.

Raphael Mutua Muli, the Assistant Chief of Katulani Sub Location recalled that he got a report on 4.11.1999 that somebody had been killed . Accused was pointed out as the suspect and he arrested him. He knew the accused well and knew him to have been suffering from a mental illness for about two years. He had witnessed one incident in church when Accused had suddenly started shouting and people got hold of him to take him for treatment.

Dr. Jane Wasike (P.W.3) a pathologist, produced the post mortem report in respect of the deceased, which was prepared by Dr. Olumbe who could not produce it personally without unnecessary expense

and delay. Dr. Olumbe had found that the body of the deceased had multiple longitudinal lacerations on the forehead with underlying frontal fractures, subdural haematoma, cracked pot fractures of the whole skull and no defence injuries. The Doctor was of the opinion that the cause of death was head injury due to blunt object. Dr. Wasike produced the Post mortem report as Ex. No.1.

Corporal Abdulahi Noor (P.W.4), of Matuu Police Station as of 4.11.1999 re-arrested the Accused when members of public took him to the Police Station on allegation of murder. P.W.4 visited the scene of the murder and found the deceased dead, and the body was still in bed with a blood stained club nearby. He saw that the deceased had injuries on the head and face, the deceased's clothes were blood stained and so was Accused's trouser. He collected the deceased's body and took to the mortuary. He also took possession of the club, Accused's trouser and clothes and blood sample to the Government Analyst for further investigations.

Dr. Susan Muthoni (P.W.5) saw the Accused when he was referred to Mathare Mental Hospital where she worked at the time, she examined the Accused who claimed to hear voices. She also had Accused's relatives interviewed and she prepared a report with findings that Accused suffers from mental illness called Schizophrenia and recommended treatment. The Doctor found that Accused dropped out of school after suffering cerebral malaria. He was put on treatment from March 1999 to November 1999. The Doctor said that Schizophrenia is a chronic disease which may go down at times but it does not mean that it is cured. She formed the view that in 1999 when accused committed the offence, he was suffering from schizophrenia as well as epileptic seizures. It is not until 20.8.2004 that the Doctor give a certificate that Accused was fit to stand trial.

In his sworn defence, Accused said he has no idea whether he committed any offence. He was on treatment and only found himself in hospital.

After summing up, the assessors returned a verdict that Accused should be found guilty of manslaughter. It is now for the court to reach its own independent decision on the guilt or otherwise of the accused.

P.W.1 who is accused's own mother is the only key witness in this case who saw Accused and the deceased go to sleep in the Accused's house on the fateful night. Though nobody witnessed the actual murder, P.W.1 recalled having been informed by the Accused that he had killed a snake and it is only the next day that they found the deceased who had shared a bed with Accused battered to death. P.W.1's evidence considered along the evidence of the Doctor (P.W.5) that Accused suffered from Schizophrenia (mental illness) at the time of the incident and the fact that he claimed to have killed a snake in his house only to find it was deceased who was dead, points directly at him as the one who caused the death of the deceased. Though assessors reached the verdict that the Accused committed an offence of manslaughter, this court finds that the Accused committed the offence of murder but he was insane at the time. The court will therefore find under Section 166 Criminal Procedure Code that Accused is guilty of the offence of murder contrary to section 203 as read with Section 204 Penal Code but was insane at the time of the commission.

Dated, read and delivered at Machakos this 27th day of October 2006.

R. V. WENDOH

JUDGE

Read and delivered in the presence of Mr. Omirera for the State

Mr. Mutuku holding brief for Mr. Nyakeri for accused

Accused present

Catherine C.C.

R. V. WENDOH

JUDGE