



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 25 OF 2005

REPUBLIC.....PROSECUTOR

-VERSUS-

TERESIA WANJIKU THUO.....ACCUSED

RULING

The information laid against the accused, **Teresia Wanjiku Thuo** was that, on 18th December, 2004 at Soko Mjinga in Kiambu District within Central Province, jointly with others not before the Court, she murdered **John Kabiru Kinyanjui**. She pleaded not guilty before **Lady Justice Rawal** on 25th April, 2005. On 8th February, 2006 I made a selection of assessors – **Mr. Peter R. Kabwima; Mr. Fred Okenyo Matere**; and **Ms. Jenipher Akello Okello** – and on 28th February, 2006 began hearing the prosecution case.

PW1, **Anne Nyambura Muturi** was sworn and gave her testimony in the Kikuyu language, being interpreted. She lives at Kasarani in Naivasha, works at Shalma Flowers, and knew the deceased, **John Kabiru Kinyanjui**. PW1 had been taken from her home by her aunt, one **Miriam Wambui Ng'ang'a**, on 16th December, 2004 to a lady, **Wanjiku** (the accused), who owned a bar at Magina, near Kimende. The purpose was that the accused would employ PW1 at the said bar. However, this arrangement aborted from the beginning; as certain things happened in the night on 17th December, 2004 which led on to the present criminal case. In the early morning of that day, the accused left PW1 at home, for her rural home at Kinangop, as she said; she returned in the evening and asked PW1 to prepare supper; and at that moment a man came whom the accused referred to as **Peter**. As the accused served **Peter** with a **Pilsner** beer, a second man, whose name PW1 did not know, came in. A third man, referred to by the accused as **Ken**, soon came in as well. **Ken** was not taking beer like the others, and so the accused asked PW1 to prepare tea for him. After **Ken** had left, another man, whom the accused referred to as **John**, came into the house, at about 11.00 p.m. The accused introduced **John** to PW1 as her husband. **John** ordered beers for the others, but **Peter** refused this offer and bought his own. The people in the room drunk their beers in silence, and **Peter** urged the man whose name was not given, to leave with him, without delay. The two of them left in the rain, after being given an umbrella by the accused. At this time only **John**, PW1 and the accused were left in the house; and **John** now asked the accused to go outside with him, to discuss some unspecified family matter. The accused had to visit the ablution and so she walked out of the room; **John** followed, and the door was locked – by somebody, from the outside.

The house of the accused comprised a single room, and was set in one compound with a perimeter fence, and in that compound there were five other houses. The ablution was some 20 metres from the accused's house, and PW1 had no certainty if indeed, the accused had gone there when she walked out of the

house. **John** and the accused did not come back; but at about 5.00 a.m. the following morning, the accused alone returned to the house. She opened the door and got in. In the night, PW1 had remained in the house, as the door had been locked from outside. Whenever the door was not locked, it would fall ajar by itself – but this did not happen in the night after the accused and **John** departed. PW1 testified that had it been necessary for her to get out of the house in the night, she would have shouted from inside to the neighbours to come and let her out.

It was PW1's testimony that when the accused returned to her house in the small hours of the morning, she was covered with mud, and there was blood on her face and her head. When PW1 inquired what was the matter, the accused requested to be cleaned and put in bed, without being asked questions. PW1 testified that the accused appeared to have stab wounds; she cleaned her, and put her in bed.

PW1 testified that when the accused had left the house the previous evening, she had been wearing a purple skirt, a white blouse, a blue pullover and blue slippers. When she returned in the morning, she had no slippers, and no pullover.

PW1 left the house after settling the accused in bed. She wanted to see **Ken**, the gentleman who had come to the accused's house the previous evening, and in particular to mention to him the experience she had just had. **Ken** was not at his house, but PW1 found there one **Gitau** and one **Muthoni**, and **Muthoni** went out with her to trace **Ken**. After finding **Ken**, he accompanied PW1 and **Muthoni** and they walked towards his house; but while on the way, they saw a body lying outside the main gate of the plot compound; it was the body of **John**. PW1 knew it was **John** because she had seen the clothes he was wearing in the night, which were still on his body. **John's** face was injured, and it looked like he had been hit with stones. There were stones around his body, and the accused's pullover and slippers were also lying near the body. The place was not stony, and PW1 thought that the stones had been brought from elsewhere. The time was about 7.00 a.m.

Jolted by the happenings of the night, PW1 thought to get quickly to her aunt's place at Magina, near Kimende. She did so, and her aunt gave her Kshs.250/= and asked her to leave Magina. She left for her uncle's home in Naivasha. She never returned to the accused's place, and has no idea what else took place there. But later, on 6th January, 2005 the Police from Uplands Police Station sought her out at Naivasha. The police wanted her to record a statement about the death of **John**. She was kept by the Police from Uplands for three weeks, and then handed over to Criminal Investigation Officers from Kiambu, who held her for a further five days.

When the matter came up for the cross-examination of PW1, on 26th September, 2006 learned Prosecution counsel, **Mrs. Ogoma** expressed concern that three crucial witnesses in this matter had died before giving evidence; and on this account she needed further instructions from the Director of Public Prosecutions.

On 6th November, 2006 **Mrs. Ogoma** indicated that she would close the prosecution case at this early stage; and for the accused, learned counsel **Mr. Makori** then submitted that no case-to-answer had been disclosed, and the accused should be acquitted at this preliminary stage in the trial process. **Mr. Makori** submitted that only one witness, who had not been an eye witness, had given evidence in support of the prosecution case; no doctor's evidence had been given to establish the cause of death of the deceased; the investigating officer had not testified. In the premises, counsel urged, the evidence brought before the Court was "totally insufficient."

That is the basis on which I have to give this ruling, as learned counsel **Mrs. Ogoma** indicated that she would not make responding submissions.

Quite certainly, the evidence adduced through PW1 was in the nature of *circumstantial evidence*, as the witness did not perceive the deceased being killed. The rule about circumstantial evidence is that the circumstances ? or some of them ? in respect of which testimony is given in Court must be mutually reinforcing, and carrying the unequivocal message that the *accused is the one* who caused the death of the deceased. In the absence of other evidence, the element of *intention* remains unascertained, just as with

the element of *actus reus* ? quite apart from the fact that the circumstances testified to by PW1 have *not been corroborated* by any evidence at all.

Therefore, proof by circumstantial evidence has not been achieved; and it can be stated plainly that no *prima facie* evidence has been adduced to give the *probability* of the accused having committed the offence charged.

In these circumstances, I hereby acquit the accused by virtue of the provisions of s.306(1) of the Criminal Procedure Code (Cap.75), and order that the accused shall forthwith be set at liberty, unless she is otherwise lawfully held.

I discharge the assessors who have been serving in this trial.

Orders accordingly.

DATED and DELIVERED at Nairobi this 15th day of November, 2006.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court clerk: Ndung'u

For the Prosecution: Mrs. Ogoma

For the Accused: Mr. Makori