REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Case 141 of 2003

REPUBLIC……..…….PROSECUTOR

VERSUS

DOUGLAS THIONGO KIBUCHA……...…….ACCUSED

JUDGMENT

The accused was charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code.** The particulars of the offence were that on 13th October, 2003 in Maralal Township of Samburu District, the accused murdered Mary Nyambura Kimani, hereinafter referred to as "the deceased".

The facts of the case can be summarized as hereunder:-

The deceased was cohabiting with the accused. **Jane Waruiru Gachina, PW1,** was a neighbour to the deceased. PW1 said that she saw the deceased on 14th October, 2003. The deceased had been beaten by the accused. The accused had quarreled with the deceased, alleging that she was having a love affair with one Mr. Musau. PW1 did not see the deceased the following day. On 15th October 2003, the accused went to the house of PW1 and asked her if she knew the whereabouts of the deceased and PW1 replied that she did not know. The witness clarified in her re-examination that she was not certain about the last date when she saw the deceased, it could have been 13th or 14th October 2003.

Marion Wambui, PW2, was the deceased's daughter. She confirmed that the deceased had been living with the accused. On 18th October 2003, PW2 was informed that the accused had killed her mother and thrown her body into a public pit latrine. She proceeded to that pit latrine and she found that some body parts had been removed from the pit latrine. The parts were; legs, hands and intestines. A pair of shoes and clothes which she identified as belonging to the deceased were also removed from the pit latrine. She further testified that the main part of the deceased's body was found near a field and the head was found in a fence near a mission camp. The evidence of PW2 was corroborated by that of Rose Wairimu, PW3.

Jack Okoth Ojode, PW4, testified that on 18th October 2003, he went to a pit latrine and smelt something unusual. He notified his neighbours and they went to the latrine and using a torch they were able to see the inside of the pit latrine. They noted something that looked like a human leg and decided to inform administration police. Administration police officers went to the pit latrine and ascertained that it was indeed a human leg. The administration police made a report at Maralal Police Station. The police moved to the scene, demolished the latrine and removed the body parts that were in it and arrested the accused as a suspect. The pit latrine was about 20 metres from the accused's house. When the police

conducted a search in the accused's house, they recovered two knives and a blood stained stool.

Chief Inspector Wickliffe, PW6, interrogated the accused and he agreed to show him where the deceased's other body parts were. The accused led PW6 to a small bush where the main part of the body (torso) was found. The accused also led the police to a place near a primary school where the deceased's head was recovered from. The accused further told PW6 that on the night of 13th and 14th of October, he quarreled with the deceased and he beat her up until she fell down unconscious. On the following day he realised that she had died and he locked up the body in his house and went to work. When he returned from work, he decided to cut the body into several parts and scatter them to different places. I believe he was doing so to ensure that it was not going to be easy for anyone to know what had happened to the deceased.

The evidence of PW6 was corroborated by the evidence of **Police Constable Samuel Chacha Atola, PW8**, who together with Inspector Kenduiywa accompanied PW6 in conducting the search for the deceased's body.

Dr. Philemon Kimoito conducted a post mortem on the deceased's body. He testified that the deceased's body parts were taken to him in a sack. In his view, the body parts had been dismembered and the cause of the death was that mutilation and loss of excessive blood.

The accused gave an unsworn statement of defence. He said that on 13th October 2003, the deceased and PW1 went to his house at about 6.00 p.m. He asked the deceased where she had been the previous five days and she said that she had been in town. He disputed that and told her that she was with her friend, a Mr. Musau. He told her to choose whether she was going to stay with him or with Mr. Musau. The accused further testified that after a short while, PW1 decided to leave and the deceased escorted her. The accused said that he never saw the deceased again. On 18th October 2003, administration police officers, went to his place of work and told him that they wanted to go and inspect his house. He took them there and they searched the house and got a stool which had some blood drops. He said that the blood came from a boil which the deceased had. Thereafter he was arrested and taken to a police station and the stool was taken away by the police. Later he learnt that the police had gone back to his house in his absence and recovered a knife therefrom. He denied having murdered the deceased.

Mr. Nyaramba for the accused submitted that no eye witness was called by the prosecution and therefore there was no direct evidence to connect the accused with the offence. He further submitted that it was not proved that the blood that was on the knives that were recovered from the accused's house belonged to the deceased. Regarding the deceased's body parts that were recovered from the latrine, the defence counsel submitted that the latrine was a public one and anybody could have thrown those parts therein. In his view, the accused had been arrested and charged merely on suspicion. He cited the Court of Appeal decision of ***SAWE VS REPUBLIC [2003] KLR 364***, where it was held that suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt. He therefore urged the court to acquit the accused.

Mr. Koech, learned state counsel, submitted that the prosecution had proved its case beyond reasonable doubt. He referred to the evidence of PW1 which showed that the deceased went missing immediately after she had quarreled with the accused. The accused had alleged that the deceased was unfaithful to him. He further submitted that the recovery of the deceased's body parts in a latrine and other different places coupled with the evidence of PW6 clearly showed that it was the accused who had murdered the deceased. He therefore urged the court to convict the accused of the said offence.

I have carefully considered all the evidence that was adduced before this court. I have also considered the submissions made by the state counsel and the defence counsel. It is not in dispute that no eye witness was called by the prosecution to testify as to how the deceased met her death. The prosecution, however, adduced sufficient evidence to show that prior to the disappearance of the deceased and the subsequent discovery of her various body parts, she had quarreled with the accused. The two were staying together as husband and wife though they were not officially married. The accused was very upset by the deceased's disappearance for a period of five days. He alleged that she was having an affair with one Mr.

Musau. The evidence of PW1 and even the defence of the accused himself were clear on that issue. PW1 was the last person to see the deceased alive and this was shortly after the deceased had quarreled with the accused. The accused had even assaulted the deceased.

The pit latrine in which some of the deceased's body parts were found was very close to the accused's house. It was the latrine that was being used by the accused and other people in the camp where the accused was residing at. After discovery of the deceased's body parts in the pit latrine, blood stained knives and a stool were recovered from the accused's house. The accused could not explain sufficiently why those blood stained knives and the stool were in his house. It is the accused who led PW6 to the place where the deceased's head and the torso were recovered from. That evidence was not challenged by the defence. It is therefore obvious that the accused must have been the one who threw the head and the torso in the places where they were found. Alternatively, he must have known the people who threw those parts of the deceased's body in the places where they were recovered from. The accused also confessed to PW6 that he had actually murdered the deceased. But even if the court were to reject that alleged confession, all the circumstantial evidence that was adduced by the prosecution witnesses points to no one else but the accused as having been the one who committed the offence. In ***R VS KIPKERING ARAP KOSKE & ANOTHER*** ***(1949) 16 EACA 135*** it was held that in order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt. Applying the above principle, I am satisfied that the circumstantial evidence that was adduced by the prosecution witnesses is sufficient to found a conviction as against the accused.

The accused's defence that he did not know what happened to the deceased is untenable. There was overwhelming evidence that the accused caused the death of the deceased. The murder was premeditated, given the way the deceased's body was mutilated. That clearly shows that the accused had malice aforethought. For these reasons, I find the accused guilty of murder of the deceased and convict him accordingly.

DATED, SIGNED and DELIVERED at Nakuru this 15th day of December, 2006.

D. MUSINGA

JUIDGE