

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CRIMINAL CASE NO. 258 OF 2003

REPUBLIC.....PROSECUTOR

VERSUS

SIMON GICHOHI KIARIE.....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 state that on the 24th July 2000 at Bul-Bul village in Kajiado District of the Rift Valley Province he murdered **MONICA WANJIRU**.

Section 203 of the penal Code provides that any person who of malice aforethought causes the death of another person by unlawful act or omission is guilty of murder.

In order to prove its case the prosecution called 9 witnesses. **PW1 ANNE NYAKIO** who is the sister of the deceased in her evidence told the court that she lived with the accused as husband and wife. She had left the house of the accused 2 weeks prior to the incident and had gone to her parents on the material date the accused came to her home to collect her but she declined and the accused threatened to beat her. The conversation took place at her sister's house the deceased. The accused looked drunk but he went away. At about 2.45 a.m. she heard screams from the house of the deceased. When she got out she saw the house of the deceased had been set on fire. She rushed there and with the help of the neighbours they managed to remove the deceased and her child from the house and rushed her to hospital where she died while undergoing treatment. She suspected that it could have been the accused who had set the house of the deceased on fire.

PW2 DAVID NGOVI who is a brother in law to the deceased in his evidence also said that on that day he was at the house of the deceased when accused came there and greeted them. He complained that PW1 had declined to go with him as they had arranged. The accused who looked drunk shouted at PW1. The accused went away and he also went to his house to sleep. He was awakened by screams at about 2.45 a.m. and when he got out he saw the house of the deceased on fire. He rushed there and they managed to pull out the deceased and her child and she was rushed to the hospital where she died while undergoing treatment. **PW3**

NJERU, PW4 KABURU and **PW5 NYAMBURA** were neighbours of the deceased and who were awakened by screams from the deceased at about 2.45 a.m. and who rushed to her house which was then on fire and who assisted to pull her out and her child and rushed her to hospital where she died while undergoing treatment.

The evidence of PW6 NO.44559 **PC ABDI KORRU** and **PW7 NO.55535 PC PETER NZEMIA** was formal. **PW8 DR. WASIKE** is the one who performed the postmortem on the body of the deceased and formed opinion that the cause of death was due to superficial burns which were assessed at 72%. PW9 **PAUL WAWERU** is the Government Chemist who carried out chemical analysis on the liquid which was found in the house and which was suspected to have caused the fire which he found to be Kerosene.

The accused **SIMON GICHOHI KIARIE** in his sworn defence denied the charge. In his evidence he told the court that the deceased was his sister in law. His mother in law had called his wife **PW1 ANNE NYAKIO** to go and assist her with work for 3 days. She overstayed. He decided to go to her home to find

out why she had overstayed. Her mother requested that she stay there for another 3 weeks. He ate supper and went away at about 9 pm. He further told the court that he had no differences with the deceased and there was no reason why he could have murdered her. He was arrested on 24th July 2000 at Karen Matatu stage where he was operating his matatu. On cross examination he stated that he does not drink.

There were no eye witnesses who saw the accused set the house of the deceased on fire. The prosecution relies purely on circumstantial evidence. In order to justify a conviction 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 hypothesis than that of guilt, and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution and never shifts to the accused.

The point for this court's decision is whether the evidence showed merely existence of suspicious circumstances or whether the circumstantial evidence is sufficient to make the court to conclude that the accused and no one else was the person who had set the house on fire. The only evidence that the prosecution relies on is that the accused came to the house of the deceased to collect his wife but she declined to go with him. He was annoyed by this refusal and he looked drunk and he also threatened his wife PW1 with dire consequences. He went away. This was about 10 pm and the house of the deceased was set on fire at 2.45 am. That evidence against the accused constitutes merely suspicious circumstances and falls short of the proof requisite to warrant a conviction in a criminal case.

The assessors returned a unanimous verdict of "Not Guilty".

The prosecution has failed to prove its case beyond any reasonable doubt as required in criminal case. I make a finding of not guilty against the accused and I acquit him.

Dated and delivered at Nairobi this 19th day of April 2005.

J.L.A. OSIEMO

JUDGE