

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI
CRIMINAL CASE 21 OF 2003

REPUBLIC.....PROSECUTOR

VERSUS

PETER MACHARIA GUANDARU.....ACCUSED

R U L I N G

Peter Macharia Guandaru hereinafter referred to as the Accused is arraigned before this court charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 8th day of August 2002 at Naru Moru Forest in Nyeri District, he murdered Rachael Murugi Mutahi (hereinafter referred to as the deceased).

The prosecution has closed its case after calling a total of 7 witnesses. The evidence adduced by the witnesses is clear that the body of the deceased was recovered from a hut in the forest and that the deceased was confirmed to have died from cardio respiratory arrest due to head injury and strangulation. It is also in evidence that the hut belonged to the Accused with whom the deceased lived as husband and wife. No evidence has been adduced as to how the deceased sustained the injuries.

There is no evidence as to where and how the Accused was arrested. The evidence that has been adduced against the Accused is circumstantial evidence. The general rule set out in the case of Kipkering arap Koske and Another (1949) 16 EACA 135 regarding circumstantial evidence is as follows:

“In order to justify 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 his guilt.”

The question that this court has to contend with at this stage is whether the evidence that has been adduced by the prosecution is incompatible with the innocence of the accused and incapable of any explanation other than the guilt of the Accused.

The evidence implicating the Accused is simply that he was living with the deceased as husband and wife in the hut wherein she was found murdered. This obviously raises suspicion against the Accused as having had the opportunity to commit the murder. It does not however eliminate the possibility of any other person having had the opportunity. It cannot be said that the evidence points irresistibly to the guilt of the Accused nor can the circumstances be said to be incompatible with the innocence of the Accused particular since there is no evidence of where the Accused was arrested from and whether there was any evidences that he was party to what had transpired in his house. The evidence that has been adduced by the prosecution is “not one on which a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is offered” **Ramalal T. Bhati v/s Republic [1957] E.A. 332**. There is therefore no prima facie case established against the Accused upon which this court can put the Accused person on his defence. I therefore find the Accused not guilty and acquit him under section 306(1) of the Criminal Procedure Code.

Dated signed and delivered in open court this 22nd day of June 2005

H. M. OKWENGU

JUDGE