



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Criminal Case 20 of 2004

REPUBLIC.....PROSECUTOR

Versus

EDMOND IRUNGU MACHARIA.....ACCUSED

JUDGMENT

The Accused Person is charged with Murder contrary to *Section 203* as read with *Section 204* of the Penal Code, particulars alleging that between the nights of 26th and 27th April, 2004 in Kiamuguongo Village in Kirinyaga District, Central Province, the Accused Edmond Irungu Macharia murdered Hilda Wanjiku Macharia.

Similarly the Accused Person is charged with Murder contrary to *Section 203* as read with *Section 204* in the second count where it is alleged that during the same time as in count one and at the same place he murdered Walter Mugendi Wanjiku.

The Prosecution alleges all that. So the Prosecution must prove it all. The Accused Person need not prove anything.

I observed witnesses as they gave evidence telling the court that the Deceased in the first count, Hilda Wanjiku Macharia, was the mother of the Deceased in the second count, a child of about six years old.

It was on 8th May, 2004 when witnesses from the village where the home of the two Deceased persons was found bodies of the two floating in a water tank each body tied in a sack which also contained some stones and strings.

Police were called to the scene and recovered the two bodies from the water tank and took them to Kerugoya District Hospital mortuary where a Postmortem was subsequently performed on 11th May, 2004 when the bodies were decomposing.

Though the bodies were found in water, Dr. Paul Mbalu who performed the postmortems found serious deep wounds on each body caused by a sharp object like deep cut on the frontal neck of Hilda Wanjiku which wound had resulted in the severing of jugula vessels plus the trachea as well as Oesophagus. There was also a stab cut wound on the front face reaching the skull though without fracture. The doctor formed the opinion that those serious injuries resulting into much bleeding resulted into failure to breath and that in turn caused death of the Deceased.

On the child Walter Mugendi Wanjiku, the doctor found a serious depression on the head, which had damaged brain. Trauma from that head injury caused the child's death.

That evidence clearly shows that the two Deceased persons were murdered by another person who did not die like them.

The question is who is that person? From the evidence, the Accused, a brother of Hilda Wanjiku Macharia was suspected and was arrested on that same day the bodies were discovered and recovered.

Simon Wahome Njuki (P.W.4) who claimed to have seen the Accused leaving the home of the Deceased, on the day the bodies were discovered and he subsequently caused the arrest of the Accused.

In his defence the Accused person, who said was self employed in Nairobi and had decided to go home on 7th May, 2004 when he reached home about 2.30 p.m. and found doors of all houses locked and could not trace his sister the Deceased. He therefore went and slept at Kianguaci Trading Centre where on 8th May 2004 was arrested by Police who brought him to the scene briefly and went away with him. He was subsequently charged with this offence. He did not accept that he committed the murders.

The circumstantial evidence adduced proved that the two deceased persons were murdered as the six year old child could not kill his mother and the mother could not kill her child and go on to kill herself inflicting upon herself the serious injuries that were subsequently found on her body. Even if she killed the child and herself, she could not subsequently put the two bodies inside a sack each, tie it having put some stones inside each sack and then thrown each body with its sack into the water in a water tank. Not only was such a fate difficult but was impossible.

The killing must have been done by someone else. A person with malice aforethought. Who was that person? Was the Accused the person? From the evidence, the Accused was arrested either on mere suspicion or if there is evidence proving his guilt, that evidence has been kept away from the court by witnesses who would sometimes speak as if the Accused lived in that home with the deceased persons but when questioned further none would give evidence to establish that indeed the Accused lived in that house with deceased persons. None of the witnesses who were neighbours of the deceased persons gave evidence to say he or she was seeing the Accused in that home, living there, sleeping there and that they used to meet. None of the witnesses who were neighbours of the deceased persons gave evidence to say he or she used to visit that home, see Hilda Wanjiku Macharia and the Accused plus the child and knew whether or not they lived in harmony.

Yet these were close neighbours and even P.W.2, Esther Mugure who told the court used to sell bananas together with Hilda Wanjiku at Kibinguti Market would not speak as a person who was visiting Hilda Wanjiku at her home.

The result, each neighbour witness did not know how the deceased Hilda Wanjiku Macharia lived in her parent's house in her deceased parents homestead. These were neighbours who told the court lived within distance of 300 metres, or thereabouts, from the home of the deceased person. None of them could remember the time when he or she ever saw the Accused at his home where he was expected to live with the deceased persons. None of them would know where the Accused slept in that home or in the house they claimed he lived with the deceased persons.

It was only Simon Wahome Njuki who claimed to have seen the Accused coming from that home and that was only the morning of 8th May 2004 at 6.30 a.m. The Accused in his defence told the court he was in that home on 7th May 2004 when he came from Nairobi intending to be there for the weekend but he found all doors on all houses there locked – and nobody around. So he went to sleep in a lodging at Kianguaci Trading Centre where he was found on 8th May 2004 by the same Simon Wahome Njuki who caused the arrest of the Accused.

Simon had not talked to the Accused at 6.30 a.m. when he claims he saw the Accused about 70 metres away at the home where dead bodies were. How did he know the Accused was at Kianguaci Trading Centre? Could Simon Wahome Njuki have seen the Accused on 7th May 2004 or is it true that the Accused was at his home that morning? It is the word of Simon Wahome Njuki against the word of the Accused. Who is telling the truth? Difficult to say – when every villager's word may not be reliable. If Esther Mugure could only feel the bad smell after getting water in her jerrican, it means the homestead was not filled with the bad smell for everybody else to smell it. The Accused could therefore be there, notice that all houses were locked and leave without feeling the bad smell. People stayed in that home for

whole morning, according to their evidence, on 8th May 2004, without leaving until the Police collected the bodies and a new person arriving had to be directed to where the bodies were without the smell leading him there. It means the smell was not all over the homestead although it was there at one place.

So then can the court rely on the evidence of Simon Wahome Njuki of having seen the Accused at his home at 6.30 a.m. on 8th May 2004 to convict the Accused?

Otherwise where is other connecting evidence? The last prosecution witness P.C. Phillip Wamae proved to be very smart. He could see in the house where the deceased persons used to sleep more than what other witnesses who entered the house had seen. They had not seen any room which was being used by the Accused, but this witness claims to have seen one, and not only that, the room had clothes belonging to the Accused. This is a witness who saw the knife found on the top of a table when others saw it differently. A jembe on the floor when others saw it differently. How was the house opened? Some witness said the house was opened by the Police while others said members of the public. The Police found the door open. And therefore when the Police opened that house, members of the public entered it freely together with the Police. Other witness could not agree with that as the Police were strict and civilians could not get into the house. But one civilian was allowed in.

How about the date of the offence? The information gives the date as between the nights of 26th and 27th April 2004. All the evidence adduced was about the date 8th May 2004. No evidence about 26th and 27th April 2004. Did the evidence on record prove the offence alleged committed between the nights of 26th and 27th April 2004? I do not think so.

That is the evidence before this court. I have no doubt in my mind that that evidence falls far short of proving this case against the Accused beyond reasonable doubt. It is no evidence to sustain a conviction on any of the two counts facing the Accused.

I note that Assessors also returned a verdict of not guilty. It was a unanimous decision.

Accordingly, I do not find the Accused person guilty of any of the two offences. I do hereby acquit him on each count. He be released forthwith unless lawfully detained in some other cause.

Dated this 26th day of July 2005.

J. M. KHAMONI

JUDGE