



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NYERI

Criminal Case 22 of 2004

REPUBLIC.....PROSECUTOR

Versus

JANE MUTHONI MURIUKI.....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 on the 4th day of June 2004, at Ragati Village of Karatina Division in Nyeri District, Central Province, the Accused Person murdered Mary Wanja Mureithi.

The prosecution alleges all that so must the Prosecution prove it all. The Accused Person does not have to prove anything.

Evidence was adduced that the deceased, a child of about 1½ years was a daughter of the Accused, then an unmarried lady. There is a dispute as to whether at one time the Accused had been married. If she had been married there is a dispute as to whether the person who had married her became the father of the deceased child.

However, it would appear that the Accused Person, as a single parent, was not comfortable with the child and would sometimes leave the child in the hands of other people like friends, particularly a young girl called Elizabeth Muthoni, then eleven years.

She was P.W.1 in these proceedings.

On the 4th day of June, 2004 Margret Wamuyu Wambugu, P.W.2, who was living in her house at Sofia in Karatina town with Elizabeth (P.W.1) and the deceased child, noticed that the child was sick. She advised Elizabeth to take the child to the child's mother at Ragati Village so that the mother of the child could take the child to hospital.

Elizabeth did as she was told and left the child with the Accused who told Elizabeth that she was taking the child to hospital for treatment. Elizabeth returned to inform P.W.2 what had happened.

The Accused Person, after Elizabeth had given her the child, told people who met her with the child that she was taking the child to hospital. But when those people later saw her without the child, she is said to have told them that she had taken the child to the village – to her former husband's home. She told Elizabeth. She told Margret (P.W.2).

She told Pauline Waithira Kabanyi (P.W.4) adding that she took the child to the child's grandmother. To this witness the Accused mentioned the name of the place where the grandmother of the child was as

Karuga or Karura. The Accused further told Shelmith Nyawira Maina (P.W.5) that she had taken the child to the child's grandmother after treatment of the child at the Karatina hospital. All these ladies, with the exception of P.W.2, had seen the Accused with the child after Elizabeth had given the Accused the child because the child was sick and the Accused had told each one of them that she was taking the child to Karatina hospital for treatment. But when the Accused was meeting them later, at the time she had no child, is when she was telling them she had taken the child to the village to the child's grandmother. To another lady, Eunice Nyawira Maina (P.W.6), the Accused told her she had taken the child to the child's grandmother and left a letter inside that child's coat telling the grandmother that she can kill the child or take care of the child. To this witness the Accused told her the child's paternal grandmother to whom the Accused had taken the child was called Karumi. The Accused told P.W.5 that she had taken the child to the child's grandmother because the child was sick and she (the Accused) was unable to take care of the child. This witness agreed during cross-examination that she had not told the Police that the reason the Accused gave her for taking the child to her grandmother was that the Accused was unable to take care of the child. P.W.6 further agreed that she had told the police that the reason the Accused gave her was that the child was a daughter of the son of the woman to whom the child was taken.

Following what is stated above, the following day 5th June 2004, the body of a dead child was found floating in a Ragati Village Cattle deep. It was retrieved and when the news spread in the neighbourhood, Elizabeth (P.W.1) and Eunice Nyawira Maina (P.W.6) were the neighbours of the Accused who went to the deep and identified the body of the deceased as that of the child of the Accused. Eunice Nyawira accompanied the body to the mortuary while Elizabeth went to the houses where she had left the Accused and other women and informed them, as she screamed, that the dead child was Mary Wanja the child of the Accused.

The court was told that at that time the Accused Person was in the house of P.W.2, Margret Wamuyu, and when her startled friends and neighbours tried to know more from the Accused about her child she had been telling them, since the previous day, that she had taken to the child's grandmother after treatment at Karatina hospital, the Accused Person turned hostile. Elizabeth and Margret Wamuyu who seem to have been accommodating the Accused whose permanent place of residence was not revealed to the court, were not so open to the court, but P.W.4 Pauline Waithira Kabanyi and P.W.5 Shelmith Nyawira Maina were open.

P.W.4 told the court that when they went to the Accused, following the information that her child had been found dead in a cattle deep, asking for more information from the Accused as to where she had left the child, the Accused came out of Wamuyu's house armed with a knife and did not answer the question she was being asked. P.W.4 told the court that Mama Muthoni disarmed the Accused Person and they arrested her and took her to the Police. During cross-examination P.W.4 conceded that the Accused Person had replied their question and stated that she had taken the child to Karura to the child's grandmother. Incidentally the name of that place is variously given as Karura, Karumi, Gathumi or Kiawangi in Kathungu area.

P.W.5 told the court, on that issue, that the Accused came out of Wamuyu's house armed with a knife and wanted to stab Wanjira. I am not sure whether P.W.5 was talking about Waithira. In any case, P.W.5 continued to say that she got hold of the Accused and snatched the knife from the Accused and they proceeded to arrest her and took her to the Police.

P.W.7 Cicilia Wanja Mwangi told the court she was the mother of Johnson Murithi Mwangi said to have been the husband of the Accused. Although the deceased child had the name "Wanja" just like P.W.7, the witness did not accept the claim that his aforementioned son, who had already died before the child died, had been married. She said her son had never married and did not have wife or a child. She conceded she did not live at her village, Kiawangi in Kathungu area with his son and that when the son died she did not know where he had been living and the work he had been doing but insisted that if the Accused had been married as claimed and the deceased child was her son's child, she could have seen her son take them to her at her home and she could have seen them and known them before his son died and she could have known of the dowry paid as his son would have asked for dowry to go and pay. To her knowledge, no dowry was paid as her son never went to ask for the dowry and therefore the Accused Person cannot

claim to have been married by her son. Before he died, her son had not been going to her home to see her for a period she estimated to be not less than a year. She only saw her son's body being taken to her home for burial and she had not known where the son had been living.

P.W.7 told the court that the first time she saw the Accused was on the day the Accused went to her home in the company of the Police who wanted to know whether P.W.7 knew the Accused and whether the Accused had taken the deceased child to P.W.7 and left the child with P.W.7. She denied having seen the Accused before that day and therefore denied that the Accused had taken the deceased child to her and abandoned the child with her (P.W.7) a day before the child was found dead in a cattle deep at Ragati Village in Karatina. She did not accept the suggestion that she knew the Accused and her child but was simply refusing to accept them as members of her family in order to deny them inheritance. P.W.7 therefore told the court that she did not know the deceased child, had never seen the child and that it was not true that the Accused had taken the child to her the day before that child was found dead in the cattle deep.

P.W. 8, Dr. Ibrahim Gatangi of the Provincial General Hospital at Nyeri examined the Accused, found her normal and certified her fit for the trial. By then, on 6th July, 2004, the doctor assessed the age of the Accused Person as 20 years.

P.W.9, Corporal Pius Chemwolo was a Police Officer on duty at Karatina Police Station when on 5th June, 2004 P.W.3, James Mwangi Gichoi the Assistant Chief of Ragati Sub-Location, reported that he had seen a body of a child floating on water in a cattle deep in his area. P.W.9 and other Police Officers visited the scene and retrieved the body from water in the cattle deep. The child was dead and from the people who gathered around, P.W.9 was able to remember P.W.6, Eunice Nyawira Maina as the person who identified the body to the Police – Eunice said she accompanied the body up to the mortuary. The child's clothes could not be traced either at the deep or from the Accused or from P.W. 7 the alleged grandmother. Apparently Eunice was to show the Police where the Accused could be found. But by the time they were through with the mortuary at the hospital, they went and found that the Accused had been arrested and taken to the Police Station by members of the public.

The Prosecution's case was concluded by evidence from the Postmortem report written by Dr. Moses Njue, a Specialist Pathologist who produced the report as exhibit No. 2. He told the court that the body of the deceased child at Karatina District Hospital mortuary was identified to him by two relatives of the child, namely Purity Wangui Muriuki and Jane Muthoni Muriuki who were with a Police Officer Corporal Chemwolo on 10th July, 2004. He found a cut, which was not deep, on the abdomen and suspected that another doctor tried to perform the postmortem and stopped on the way. His suspicion was confirmed to him by the information to that effect, he received from Corporal Chemwolo and the mortuary attendant.

On his own examination of the body, the doctor found blood oozing from nostrils and there was bleeding through the eyes. Bruises were on the face. The trachea and muscles in front of the neck were bruised and the trachea cartilage was collapsed. On removing the skin of the fore head, the doctor found blood clot, more on the left side than on the right side. There was more blood clot at the back of the head. But there was no fracture of the skull. The spinal code was fractured at the neck region.

The doctor formed the opinion that the cause of death was lack of air due to strangulation and that that death had nothing to do with drowning in the cattle deep. It was Asphyxia due to strangulation.

At the end of Dr. Njue's evidence, the Accused Person when put on her own defence was very brief stating as follows:

"My baby was sick and I took her to hospital but did not reach the hospital, as I decided to take her to her grandmother. I did not kill the child. I have nothing more to say.

That is all. I have no witness to call. I close my defence."

The three assessors, all women apparently with children, unanimously returned a verdict of not guilty reasoning that no witness gave evidence in this court, stating that she/he saw the Accused Person kill the deceased child. The women who arrested the Accused needed no such a witness. The women who have heard evidence against the Accused require the witness. These are all civilian women.

That being so, the question is: who killed the deceased Mary Wanja Mureithi, a child of only 1½ years old? The evidence on record shows that the deceased was killed by a human being. Whether he died by drowning in water, which was discounted, or died by strangulation as found by the Pathologist, the deceased was, at that age, a person who was incapable of killing herself in the manner in which she died. The court has no evidence that the child was walking, and even if she was walking, there is no evidence to show she was capable of finding her way to that particular cattle deep, cause to herself the injuries that were found on her body, and then throw herself into the water in the cattle deep for her body to be found floating therein the way it was found. No animal, other than a human being, could have caused such injuries and thrown the deceased into the water in the cattle deep.

Who is that human being? There is overwhelming evidence that the Accused Person was the last person to be seen with the deceased child alive. At that time the accused was telling people that she was taking the child to hospital for treatment. She did not tell them, at that stage, that she was taking the child to the child's grandmother or that after treatment at the hospital, she would take the child to her grandmother. The Accused came to talk about the grandmother of the child only after those whom she had informed she was taking the child to hospital subsequently saw her without the child and wanted to know where the child was. That is when she claimed she had taken the child to the village to the child's grandmother.

One could imagine that the taking of the deceased to her grandmother, in the circumstances of this case, was such a great event that one would have expected that the Accused could have enlisted the company of a friend or relative or even an assistant like Elizabeth P.W.1, to escort the Accused to the home of P.W.7, the grandmother. On the contrary, the Accused did not see it that way. On that issue therefore, the court has the word of the Accused against the word of P.W.7. But the evidence of P.W.7 was not shaken in this court when she was in the witness box. The defence the Accused Person has put up as quoted above, makes no impact upon the evidence of P.W.7 and I find no basis upon which I can disbelieve the evidence of P.W.7 in order to believe the defence of the Accused, even if I were to merely say that the Accused may have taken the deceased child to P.W.7. I have no basis to dare say so – when P.W.7's evidence is so unshaken – by the defence.

The clothes the deceased had when alive, disappeared, probably, to make identification of the body difficult.

Further, the conduct of the Accused from the time news of the discovery of the body of a dead child in the cattle deep got spread is telling. If indeed she had taken her child to P.W.7 under the circumstances of this case, with the note she claimed to have written and put in a pocket of the child's clothes telling P.W.7 either to kill the child or to take care of the child, that news could have made the Accused feel very much concerned and she could have been faster than Elizabeth, P.W.1, to reach the cattle deep to check on the body. On the contrary the Accused was so unconcerned and even went to the extent of being unco-operative with, and dangerous, to friends and neighbours who wanted to know more from her with a view to assisting her. Arming herself with a knife and threatening to use it in assault against the said friends and neighbours until they confronted her, disarmed, arrested and escorted her to Karatina Police Station. They were all fellow women – who handed her over to the Police as a suspect criminal.

Otherwise why did the Accused not show shock or surprise or grief when she received news from Elizabeth P.W.1, that indeed the dead child was her daughter? The cause of death was asphyxia due to strangulation, the trachea and neck muscles not only having bruises but the trachea cartilage also having collapsed. In addition, injuries on the head and fracture on the spinal column. If Elizabeth had taken that child to the Accused with those injuries, the Accused could have been the first person to point it out, not only to Elizabeth, but also to each one of the several ladies who subsequently met the Accused with the child and the Accused told them she was taking the child to hospital for treatment.

From the foregoing, those injuries must have been caused by the Accused and the severity and extent of those injuries and the fact that the body was thrown into water in a cattle deep as a disposal place, clearly manifests malice aforethought on the part of the Accused. The answer to the question: “who killed the deceased?” Is that it is the Accused Person who killed the deceased.

True, no witness testified in the court saying that he/she saw the Accused kill the deceased, but, in my opinion, the circumstantial evidence the court has, irresistibly points at the guilt of the Accused Person to the exclusion of any other person. The poor child was violently and mercilessly strangled to death by her mother and the body thrown into the water in Ragati cattle deep. I am satisfied there is sufficient evidence to sustain the conviction of the Accused. I therefore find the Accused guilty of the offence as charged and convict her.

Dated this 18th day of August, 2005.

J. M. KHAMONI

JUDGE

Present:

The Accused In The dock.

Mr. Orinda for the Republic

Mr. Kimani for the Accused.

J. M. KHAMONI JUDGE

Mr. Orinda:

I do not have record of the accused. She may be treated as a first offender.

J. M. KHAMONI

JUDGE

Mr. Kimani:

In mitigation on behalf of the Accused Person; there is actually little I can say from the nature of the offence and the fact that the accused Person has been convicted.

Perhaps I may just remark on the fact that by the time the offence was committed, the Accused Person’s age was assessed by the doctor who examined her as 20.

J. M. KHAMONI

JUDGE

SENTENCE

The Accused Person has been convicted.

She is being treated as a first offender.

I fully take into account what Mr. Kimani has said on behalf of the Accused particularly her age which was assessed by the doctor who examined her at the time the offence was committed to be 20

years.

This was her child but the fact is that the accused is not even remorseful for what happened.

There is no doubt that the offence she committed is a very serious offence. In the circumstances, the court should not condone such an offence. That being the position, the Accused Person is hereby sentenced to suffer death in accordance with the law under Section 204 of the Penal Code.

Dated this 18th day of August 2005.

Right of appeal explained.

J. M. KHAMONI

JUDGE