



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION**

Criminal Case 132 of 2004

REPUBLIC PROSECUTOR

VERSUS

MICHAEL WAWERU MUINAMI ACCUSED

JUDGMENT

The Accused herein is charged that on 22nd June, 2004 at Kihara Village in Kiambu District he murdered Hannah Nugulu Waweru and John Mbuthia Waweru his wife and son respectively.

It is undisputable that dead bodies of the two deceased persons above referred were found lying on a bed in a pool of blood on the material date. They were found by Jackson Ngugi Muinami (PW.1) and Esther Wambui Norman (PW.2), brother and mother to the Accused person. The causes of death of two deceased persons were found to be head injuries due to blunt object by Dr. Moses Njue (PW.5) who performed autopsies on bodies of the two deceased persons.

The Accused is charged with offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The essential ingredients of the provision of law thus have to be proved by the Prosecution beyond reasonable doubt.

It cannot be disputed that the case of the Prosecution is based on circumstantial evidence as no one has seen the Accused person committing this heinous crime.

As per testimony of PW.1 The Accused person came to his house on 22nd June, 2004 at around 6.30 a.m. to borrow his bicycle to go to Westlands. He did not find anything unusual in such request and he loaned the bicycle to the Accused. The two brothers were living in the same homestead. At around 1.00 p.m. on the same day he was at his mother's house, and a daughter of the Accused came there. His mother PW.2 asked her where her mother was as PW.2 had not seen her that morning. The daughter who was a minor replied to her that her mother was not responding to her call. They both then went to the house of the Accused which was at about 1.30 p.m. and found the wife of the accused lying on a bed. He found PW.2 in a shock. He also confirmed that there were many houses in the homestead where they lived and did not hear any quarrel between the wife and the Accused. However, he did mention that his house was at a distance.

The Prosecution despite this evidence in his cross-examination did not ask PW.2 the mother as to the possibility or otherwise of her hearing any quarrel between the Accused and his wife and distance between their houses.

Be that as it may, PW.2 the mother corroborated evidence of PW.1 as to the daughter of the Accused coming to her house from the school at 1.00 p.m. She also testified that she found the wife sleeping facing

down with her child and the deceased wife did not respond after she called her by her name 'Hannah'. She then went to Police to report. This witness categorically stated that there was no dispute or quarrel between the Accused and his deceased wife. She also did not describe the scene or injuries found on the two deceased persons. She also confirmed that many people live in the compound besides her three children. She also stated in cross-examination that she served tea to young Anthony at about 7 a.m. Who this Anthony is, was not clarified by the Prosecution during re-examination. This explanation was, in my view, very necessary as the Accused was seen leaving the premises at around 6.30 a.m. as per evidence of PW.1.

Corporal Bernard Mutimba (PW.4) is the officer who visited the scene after report was received at Karuri Police Station at around 12.00 p.m. The evidence of two earlier Prosecution witnesses as to time when the bodies were found is definitely different. He saw the two bodies with blood from mouth, ears and noses, and blood stained beddings. He also found a piece of wood under the bed. Both these items were collected by him for further investigation. He did not find any visible injuries on either of the bodies.

However, Dr. Njue (PW.5) categorically testified that the face of Robert Gitau (Deceased in count No. II) was blown and deformed. PC Ali Salim (PW.6) who accompanied PW.5 to the scene also stated that there were no visible injuries on either of the two deceased persons.

PW.4 and PW.6 testified that the Accused was arrested on 25th June, 2003 and that he was not available on 22nd June, 2004 when they visited the scene. It is evident that the prosecution failed to produce the piece of wood collected by these two officers. PW.8 P.C. Francis Musira produced a blanket (not the bedding) alleged to have escorted to Government Chemist by him along with the piece of wood. He also similarly produced a bed sheet and a baby shawl in evidence which have not been mentioned either by PW.4 or PW.6. Furthermore none of these two witnesses were asked to identify the said items by the Prosecution. PW.8 also took the Accused to Dr. Kamau the Police Surgeon who found him to be an adult and of sound mental health.

PW.9 Jeremiah Kabita a Government Chemist did receive blood stained blanket, a bed sheet and shawl but could not give his opinion without blood samples of the deceased and the Accused.

He opined that the piece of wood received by him did not contain any blood, but the same in any event is not before the court.

This is the evidence from the Prosecution against which the Accused gave an unsworn statement wherein he stated that he went to work as usual on the material date and at 3.00 p.m. he received a call to go home, which he did. He was told about death of his wife and son. After three days he was called to give his statement but was arrested and later charged with the offence on hand.

After the case was summed up to the Assessors by me, they gave their unanimous opinion of not guilty. They also pointed out that the Prosecution did not establish the motive or manner of the two killings.

I entirely agree with the opinion of the Assessors.

Law on circumstantial evidence is very clear and I cannot find that the Prosecution has established the case against the Accused so as to enable this court to find that there is no evidence which is inconsistent with the innocence of the Accused and to find that the case against the Accused is cogent and without any reasonable doubt.

I therefore enter a finding of not guilty against the Accused and direct that he be released forthwith unless held otherwise as per law.

Dated and signed at Nairobi this 20th day of September, 2005.

K.H. RAWAL

JUDGE

20.9.2005