



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

CRIMINAL CASE 8 OF 2005

REPUBLIC PROSECUTOR

VERSUS

JAMES RUKU NJOROGE ACCUSED

JUDGEMENT

The Accused person herein is alleged to have murdered his two grandparents. He is said to have committed this offence on 15th October, 2004 at kamunyaka Village in Thika District. He thus faces two counts of offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63 Laws of Kenya).

The family including the Accused and the two deceased persons were living in the same plot where they also have their farms. The deceaseds were attacked in a ravine in their farm between the two ridges along which many other villagers lived. It has come out from the evidence that the deceased Bethwel Ruku Njoroge (deceased in Count No.1) had three wives and the deceased Teresia Ruku (deceased in count No.2) was his youngest wife. It also was borne from the evidence of family members that the Accused was step grandson of Teresia Ruka Ruku (deceased in count 2) With this short family background I shall now deal with evidence led before the court.

Undisputed facts of this case are that the Accused was found standing beside the deceased persons at the time the people started screaming and gathering at the scene. The Accused was apprehended by the members of public when he was running away. It is also on record that the Accused was handed over to the Police Officers and a panga (Ex.1) also was handed over to them by members of public.

It is trite law that to prove an offence of murder the prosecution, first and foremost, has to prove that the death has occurred. In this case, I do find that the prosecution has satisfactorily discharged that burden. It has produced Post Mortem reports (Ex.2 and 3) by Dr. Wasike through Oscar Gituma (PW.11) after an application to that effect was considered by me and not objected to by the Defence. PW.1 and PW.8 the sons of the deceased persons identified the two bodies to the Pathologist before she performed the Post Mortems. The causes of death of both the deceased persons were head injury due to sharp object. There were deep cut wounds on heads and compound fractured skull with brain laceration. There were Defence cut injuries on the left hand of the 2nd Deceased. The injuries clearly depict gruesome deaths.

Coming back to the evidence as to how these deaths occurred the prosecution called several witnesses. However, in my view testimonies of (PW.5) John Mwangi Njoroge and his brother (PW.6) Simon Gitau are very relevant.

Stanley Wahinya Ruku (PW.1), Julius Kariuki Njoroge (PW.2), David Njoroge (PW.3), Jane Wanjiru (PW.7) and John Kinyanjui Ruku (PW.8) are relatives of the deceased persons. None of these witnesses

had seen the commission of the crime but they have shed some light on the other aspects of the Prosecution case.

PW.1 is son of the deceased persons and apart from identifying the bodies, of the deceased to the pathologist, he stated that there had been quarrels over land and properties between his father and families of his step brothers. He did not specify further his averment.

PW.2 is brother to the Accused and denied that the Accused had any part to play in family quarrels. He arrived at the scene, when his grandparents were being placed in a vehicle to go to hospital. He went with them and they were pronounced dead on reaching the hospital.

PW.3 is father of the Accused and step son to the deceased in second count. He was informed while he was attending a meeting that his son (the Accused) had killed his father and youngest step mother. According to him the families of middle wife was quarrelling with his father over land. He insisted that there was no dispute between the Accused and his father (the deceased in 1st count).

PW.7 is daughter to the deceased. On the material day at around 3.30 p.m. he saw the Accused entering his house and coming out from there after sometime. Her evidence did not adduce any further relevant evidence. PW.8 was a son to the deceaseds (step son to the 2nd deceased) and apart from identification of the two bodies his evidence did not divulge any relevant fact.

Esther Wanjiku (PW.4) a neighbour apart from hearing screams to the effect that '*he had killed them*' and joining in those screams did not state anything further.

PW.5 was with his brother (PW.6) in his farm and around 3.00 p.m. they heard screams of people saying 'he has killed them'. Hearing this, they both went towards the direction of the screams which was near a valley. They went down and from a distance of two metres he saw three human figures in the valley. A male and a female were falling on the ground and third male trying to escape from the scene holding 'something' on his hand.

They both ran after the man who was running away and caught up with him. He identified the as Ruku (Accused) who was his friend. The Accused could not run further as he was surrounded by people coming down from the ridges. When the Accused sensed that the crowd had turned very hostile he took them to a stream where a panga "*with blood stains and with human hairs*" was recovered by them (Ex.1) When they went back to the scene the two persons lying down were already taken away to the hospital. In cross-examination he described the clothes which the Accused was wearing and further stated that his jacket was with blood stains and his T-shirt also had some stains as he was ruffled up by the members of public who had gathered. The Accused was taken to the Trading Centre where police were called by PW.6. On arrival of the police he handed over the panga (Ex.1) to the officer when the Accused was also arrested.

PW.6 while going down the valley also saw three figures at the scene. He saw a lady holding her head, a man was lying down and third was running away from the scene holding a panga (Ex.1). He (the Accused) was about a feet away from the body. He and PW.5 ran after him and caught him but at that time he was not with the panga he saw him earlier. The man was overpowered by the members of public who also had come down whose screams he responded to. The Accused then took them to a place in stream which had shallow waters and they retrieved a panga with blood stains and some tissues. He described the clothes worn by the Accused which tallied with the description given by PW.5. None of them saw the Accused slashing the deceaseds with the panga. P.C. Maina (PW.9) received report of serious assault. He accompanied Cpl. Gituma (PW.11) to Kamunyaka shopping centre where he found Accused tied by members of public. He took possession of a panga (Ex.1) and arrested the Accused. He confirmed dressing of the Accused as described both by PW.5 and PW.6 during cross-examination, and further confirmed that the Accused told him that he was beaten by members of public.

PW.11 confirmed what was testified by PW.9 and further stated that he did not send the recovered panga to government chemist because PW.9 did not bring blood samples of the deceased persons. However, I do note that in the Post Mortem reports (Ex.2 and Ex.3) the pathologist has noted specifically

that their blood samples were taken for grouping. I note with greatest lament the casual approach taken by the police in investigating the serious crime on hand. Similarly this officer also informed the court that clothings of the deceased persons also were collected by their relative working at the City Mortuary and could not be retrieved.

This lack of due performance of duties by the police has made a great dent in the prosecution case and I was disgusted at the apparent indifference to serious issues by PW.11. He seems to presume that all the evidence should be taken to him and it is none of his problems to look for the evidence!!! All the aforesaid witnesses (PW.5, PW.6, PW.9 and PW.11) identified the panga (Ex.1) as the one from the scene.

In response to this evidence the Accused gave his defence by unsworn statement. He stated that he went to Thika for his work on 25th October, 2004 (sic). When he returned home he did not find any one and went to cattle shed and on reaching there he heard noise coming from their farm down in valley. He went down to check and found his grandparents with serious injuries. Before he could decide how to help them the members of public started descending and beating him. He tried to explain but they did not heed. At least with intervention of some, it was decided to hand him over to the Police. Then he repeated how he was taken to shopping centre and handed over to the police.

From the evidence led it can be easily said that the Prosecution case is based on circumstantial evidence. The law on the proof under the said evidence is very much founded on a solid rock of legal precedents. Simply put, it says that the Prosecution should build a consistent and unbroken chain of incidents and facts which irresistibly bind the accused tightly without any doubt as to his innocence. The Accused should not be able to get out of the said chain. Then and then the court is to find him guilty. As a result of absence of evidence on the blood stains on the panga (Ex.1) and absence of production of blood stained clothes of the deceased persons, in my humble opinion, the prosecution has failed to establish the consistent chain as observed by me. I do have grave doubt on the statement given by the Accused but the court cannot convict an Accused only on suspicion which in this can be very great. I have to bow down to the law which enjoins the court to enter its finding on the weight of the evidence put forth before it.

In the premises, I do not have any choice but to give benefit of doubt to the Accused and thus I enter finding of not guilty in his favour. Accordingly, I acquit him of the charge of murder leveled against him, and direct that he be released forthwith unless held otherwise as per law.

I just note that because of the observations made hereinabove, I agree with the opinion of the Assessors.

Dated and signed at Nairobi, this 13th day of October, 2005.

K.H. RAWAL,

JUDGE

13.10.2005