

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE 25 OF 2004

REPUBLIC **PROSECUTOR**

VERSUS

JAMES WAMBUGU GATHUA **ACCUSED**

RULING

James Wambugu Gathua hereinafter referred to as the Accused has been 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 February 2004 at Gatagati village in Nyeri District within Central Province, he murdered Alice Karimi Miriti.

A total of 9 witnesses have testified in proof of the prosecution's case. Briefly their evidence was as follows. The deceased and the Accused were cohabiting together. They were staying about 300 feet away from the home of a village elder Titus Wanjohi Gathuri (P.W.1). On the 7th February 2004, the deceased rented a room in a house owned by Jeremiah Hiuhu Mathenge (P.W.2). She took possession of the room brought a few things and slept in the room.

On 8th February 2004 the deceased went to Titus Wanjohi Gathuri (P.W.2) and sought his intervention in assisting her collect her things from the house of the Accused P.W.2 went to the house of the Accused accompanied by the deceased and two others, however the Accused refused to let the deceased take anything from his house contending that he had already reported the matter to the chief. The deceased therefore went away without the items. At around 5.00 p.m. on the 8th February 2004, P.W.2 was in his shamba when he saw the Accused going towards P.W.2's son's house. Thereafter P.W.2 saw the Accused go towards the house which had just been rented by the deceased. Nothing unusual was noted until later after 9.30 p.m. when there was a loud bang followed by the deceased screaming for help. P.W.2 and his son Samuel Muremi Hiuhu amongst others responded to the screams. They found the door to the house which was rented by the deceased wide open. On going inside they found the deceased lying on the bed with multiple cut injuries. She was already dead. A report was made to Ndavi patrol base and P.C. Ngala Chenje proceeded to the scene and confirmed that the deceased was already dead. He contacted Kiganjo police station and the O.C.S. Inspector Purity Wamuyu (P.W.5) visited the scene and recovered a panga suspected to have been used in the murder. P.W.5 got Cpl. John Mugo (P.W.4) from the scenes of crime Nyeri to take photographs showing different views of the deceased's body. The body was thereafter moved to Nyeri P.G.H. mortuary.

On 10th February 2004, P.C. Ngala Chenje and Cpl. Ochango proceeded to the house of the Accused where they found the Accused locked inside. On opening the door they found the Accused with a cut on his neck. Two blood stained knives were lying next to the Accused showing that the cut on the neck was a failed suicide attempt. The Accused was arrested taken to Nyeri PGH where he was admitted. He was later examined by Dr. William Wachira Kibe (P.W.7) who found that he had a cut on the anterior part of the neck inflicted by a sharp object. P.W.7 also found the Accused mentally and physically fit to stand trial.

On the 11th June 2004, Dr. L.K. Kioko carried out a post mortem examination on the now decomposed body of the deceased. He formed the opinion that the cause of death was cardio pulmonary arrest secondary to severe haemorrhage.

It is obvious from the above that there was no prosecution witness who actually saw the Accused person

commit the crime. The prosecution case is therefore purely based on circumstantial evidence drawn from the fact that the Accused and the deceased were previously co-habiting, and had apparently disagreed causing the deceased to move out of the Accused's house and that this probably provided a motive for the Appellant to commit the offence. The only other piece of evidence is the Accused's alleged attempt to commit suicide at the time of his arrest. The above circumstances however only raise suspicion but is hardly sufficient to establish any case against the Accused, nor can it pass the stringent test required for circumstantial evidence that the inculpatory facts must be consistent only with the hypothesis of the guilt of the accused and inconsistent with his innocence.

In my opinion, no reasonable tribunal properly directing its mind to the law and evidence can convict the Accused if no explanation is offered by him in his defence.

This means that no prima facie case has been established as laid down in the case of Ramanlal T. Bhatt v/s Republic [1957] EA 332. I accordingly find the Accused person not guilty and acquit him of the charge under section 306 (1) of the Criminal Procedure Code. The Accused shall be set free unless otherwise lawfully held.

Dated signed and delivered this 6th day of December 2005

H. M. OKWENGU

JUDGE