

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Case 62 of 2003

REPUBLIC PROSECUTOR

VERSUS

GEOFFREY THIONGO WAMBUI ACCUSED

R U L I N G

Geoffrey Thiongo Wambui (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 being alleged that on the 9th/10th day of November 2002 at Kagaa trading center in Murang'a District of the Central Province jointly with others not before the court, he murdered Rispher Wakiyu Karega.

A total of 9 witnesses have testified for the prosecution. According to the evidence of Julius Mwaniki Kamau (P.W.1) Peterson Mwangi Muchugia (P.W.2) and Peter Kabachia Kariuki (P.W.8). The deceased was seen at Kagaa shopping center on the night of 9th November 2002. P.W.1 and P.W.2 agree that the deceased was very drunk. According to P.W.1, he saw the accused and one Macharia at about 7.30 p.m. at a corridor near the American Bar and the Accused was having sexual intercourse with the deceased who appeared to be protesting. The evidence of this witness was however not very consistent.

His evidence in chief and in cross-examination was not consistent. It appeared also from the cross-examination that his evidence in court was not consistent with what he had recorded in his statement. He did not strike me as a truthful witness.

Moreover according to P.W.2, at about 8.00 p.m. the deceased who was very drunk, was lying down outside Wendani Bar. The Accused and one Macharia who were drinking at the Bar left the Bar before P.W.2. P.W.2 did not however see the deceased with the Accused at any one time. The only other evidence that appears to touch on the Accused is the evidence of Francis Kiunjuri Karanja (P.W.3) who was on his way home at about 9.30 p.m. when he came across a group of young men. As the young men were escaping one ran towards him slipped and fell down. It was dark and though the witness struck a match stick he did not recognize the man. He relied on information from one Karanja who was not called as a witness, who purported to identify the man as one Macharia. That information is of course hearsay. In any case it does not add much value to the case against the Accused as the accused was not positively identified as one of the young men seen by P.W.3. At the close of the prosecution case there is only some disjointed evidence to the effect that the Accused was seen with the deceased at Kagaa shopping center on the fateful night. It is conceded that there were very many people at the shopping center on that night and yet none saw the accused leave the shopping center with the deceased. It is evident that the case against the accused is based on nothing more than pure suspicion. That is not sufficient to establish a prima facie case against the Accused person. I do therefore 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 this 1st day of December 2005

H. M. OKWENGU

JUDGE