



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CRIMINAL CASE NO. 40 OF 2003

REPUBLIC.....PROSECUTOR

Versus

CECILIA WANGECI KANYUIRA.....ACCUSED

JUDGMENT

The Accused is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars allege that on the 30th October 2002 the Accused person murdered William Kanyuira Wangechi at Giagachucha Village in Nyeri District of Central Province.

From the evidence, the Accused was the mother of the deceased child who was about four years old. They lived in the home of the mother of the Accused and during the day on 30th October 2002 Naomi Mumbi Kanyuira (Naomi), the mother of the Accused who gave evidence as P.W.1, went to Kiamariga market leaving the Accused and the deceased only at home. When Naomi returned later in the evening from the market, she could not see the child. On inquiry the Accused told her mother that the child had been taken to its father in Kirinyaga – mentioning a name, Peter Mwangi, which was not familiar to Naomi who knew a different name she mentioned as Kin’gori or Kariuki from the side of Kerugoya.

Naomi had left for the market at about 2.00 p.m. and did not see how the Accused had traveled to Kerugoya and returned. Moreover the Accused was not staying with the father of the child and did not even know where his home was, according to Naomi, who gave evidence as P.W.1. She told the court she found it difficult to believe the Accused and therefore became suspicious of the Accused – who had been saying before that she did not know where the father of the child lived.

It would appear they had done some searching in the homestead which was fenced although there is a dispute as to how well knit the fence was and whether or not a human being could pass through. Neither the Prosecution nor the defence cared to define the size of the human being to pass through and what they were driving at as they left the issue hanging in the air. In any case, that checking could not lead to the recovery of the child from a covered septic pit in which the body of the child was discovered a day or two later.

When in the morning of 31st October 2002 Naomi told the Accused that she did not believe the Accused and the Accused could not take Naomi to Kerugoya to show Naomi where the child was as the Accused claimed did not know the home, Naomi decided to go with the Accused to Nanyuki where the father of the Accused worked. But at Nanyuki, the Accused’s story to her father was the same story the Accused had given to her mother who was no longer believing the Accused. Hence no progress. Naomi and the Accused returned to their home the same day and Naomi took the Accused with her to Kiamariga Police Post and reported the matter to the Police. According to Naomi, she left the Accused on that day with the Police but according to Constable James Lakatia, the Accused did not remain at the Police Post. It was on 4th November 2002 that the two ladies and a man went back to the Police Station and reported

that they suspected the Accused had killed the child and that they had seen something in the septic pit whose cover had been interfered with.

When the Police visited the scene they retrieved the body of the child from the septic pit and took it to Karatina Hospital mortuary where a postmortem was performed and the doctor who performed the postmortem formed the opinion that the cause of death was strangulation. Apart from marks of strangulation in the neck, there were no visible physical injuries on the body externally.

The evidence on record does not disclose the person who arrested the Accused and when, but somehow while in the Police custody the Accused person was medically examined and having been found mentally fit to stand trial, was subsequently charged with this offence.

In her unsworn defence, the Accused person was very brief stating that while she was left with the child at home on that day 30th October 2003, she also left the child sleeping. She did not elaborate to indicate where in the home was the child left sleeping. But went on to say that when she returned home and did not see the child, she got surprised. She did not elaborate and proceeded to conclude her defence by saying that she did not know how that child died.

Beginning from there and as assessors in this case posed a question, if the Accused person did not know how her child, the deceased in this case, died, how is it that she left it all to her mother Naomi Mumbi Kanyuira to be concerned? The deceased was a child of the Accused. The Accused was the one who was left at home with the deceased. If the deceased went astray and got lost or if anyone else snatched the deceased from the Accused or if the deceased was stolen from the Accused, the Accused would have been the first person to show concern and should have expressed that concern to Naomi before Naomi discovered that the child was missing. In case the Accused had gone somewhere leaving the child asleep and had returned home to find her mother back from the market but the deceased was missing, the Accused is the one who should have first shown concern and if she returned and found her mother already showing concern, the Accused should have joined in the concern of her mother about the non availability of the deceased. The story this court could have heard could have been a story whereby the mother of the Accused as well as the Accused herself were both concerned about the whereabouts of the child and went on looking for the child in order to find the child.

On the contrary that was not the position. What happened was that it was Naomi who was concerned all the time wanting to know where the child was. As she sought to have the assistance and co-operation of the Accused, the Accused would deceive her telling Naomi that the deceased had been taken to his father at Kerugoya, a reply the Accused maintained before her father at Nanyuki where she was taken on the basis that she would soften. Challenged to show the home at Kerugoya to which the deceased had been taken, the Accused retreated to say she did not know the home and continued to leave Naomi to be the only person concerned at home about the disappearance of the deceased.

The lid of the septic pit had been interfered with and Naomi could not sleep as the Accused slept soundly. Was it not because the Accused wanted to get rid of her child and had succeeded in doing it. Otherwise how could a four year old child get the capacity to lift up the heavy metal lid on the septic pit, put it aside, drop himself into the human faeces inside the pit, replace the metal lid before dying inside the pit? If by chance the child could do that, which was humanly impossible already, could he have been capable of first strangulating himself, something which he himself could only have done before he entered into the septic pit?

To my mind, the deceased child was not capable of doing those things even if he had been left to stray alone. If so, who else apart from the Accused could have done those things? I see nobody else. The Accused was the last adult person to be with the child. In fact the evidence is to the effect that she was the last human being to be seen with the deceased alive. Her defence before this court does not cast any doubt on that evidence. Her statement that she does not know how that child died does not convince anybody to believe her denial. The evidence on record irresistibly points at the guilt of the Accused and I find no other explanation in the alternative.

Accordingly, I am in agreement with the unanimous verdict of assessors who said that the Accused is guilty of murder. I am satisfied the Prosecution has proved this case against the accused beyond reasonable doubt and convict her.

Dated this 20th day of December 2004.

J. M. KHAMONI

JUDGE

State Counsel Orinda:

I have no record of the Accused and she may be treated as a first offender.

J. M. KHAMONI

JUDGE

Accused In Mitigation Through Counsel Mr. Theuri Mwangi:

Our hands are tied. I have nothing to say in mitigation.

J. M. KHAMONI

JUDGE

SENTENCE

The Accused has been convicted of murder, and although I take into account that she is a first offender and note that nothing has been said on her behalf in mitigation, there is only one and mandatory sentence under Section 204 of the Penal Code and that is death.

Accordingly the accused is hereby sentenced to death in accordance with the law.

Right of appeal within 14 days from to-day.

Dated this 20th day of December 2004.

J. M. KHAMONI

JUDGE

Present:

Mr. Orinda for the State

Mr. Theuri Mwangi for the Accused

Accused In The Dock

Mr. Gikaria – Court Clerk