



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO.3 OF 2003**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DANIEL NGANGA NJIIRI.....ACCUSED**

**J U D G M E N T**

The accused DANIEL NGANGA NJIIRI is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge state that on the 2nd June, 2002 at Ruthigiti village in Kiambu District within Central Province he murdered PETER NDICHU NJUGUNA.

Briefly the prosecution case is that on the 2nd June, 2002 at about 7 p.m. the deceased and PW1 AND PW11 were on their way from looking for a lost donkey. They met a group of about 5 men who attacked the deceased and inflicted serious injuries on him. The deceased was rushed to the hospital but died on arrival at the hospital.

The prosecution relied on the evidence of PW1 SALOME and PW11 NJUGUNA who were the eye witnesses. PW1 Salome in her evidence told the court that on the 2nd June 2002 the deceased in company of PW11 Njuguna came to her home and asked her to accompany them to Mama Njau to report about the loss of her donkey. They looked drunk. This was about 7 p.m. On the way they met a group of about 5 men. Three of the men were in front and two were behind them. Four of those men were pushing bicycles. She was in front with PW11 Njuguna while the deceased was behind. She and PW11 passed those men but when the deceased reached them they attacked him. One of those men was the accused whom she knew well. He is employed by the Ministry of Water as a Water Operator and he sells water to the villagers. He is a well known figure in the area. She saw the accused attack the deceased by hitting him with a fist and the deceased fell down. The accused was not armed with any weapon. She screamed but Njuguna (PW11) ran away to escape attack by those men. Some women who were coming from a crusade came to the scene. She went to her home to inform her mother whom she found absent. She met MARY WAIRIMU (PW2) who accompanied her to the scene and on arrival they found Njuguna PW11 had come back and was trying to assist the deceased.

They decided to take the deceased to the Chief and reported the matter. They met APC Mugo PW12 who was on duty and who advised them to take the deceased to the hospital for treatment but he died on arrival.

While PW11 Njuguna in his evidence told the court that on the material date the 2nd June 2002 he had

gone to the home of the deceased and requested him to accompany him to Ruthingiti to purchase timber. They went there with a donkey to transport the timber but when they arrived at Ruthingiti they missed the timber. they decided to tie the donkey and went to drink.

When they came back they found the donkey missing and they went looking for it. On the way the deceased and PW11 Njuguna met PW1 Salome who is a sister in law to the deceased and she joined them. As they went along, they met a group of about 5 men who attacked the deceased and inflicted injuries on him. But he did not identify or recognize any of those men. This is despite the fact that the accused is a well known figure at the area as he sells water to the villagers on daily basis. And according to the evidence of PW12 APC Mugo who was on duty at the Chiefs camp, when PW1 and PW11 brought the deceased to the chiefs' camp to report the incident, they informed him that the deceased had been attacked by unknown people. He booked the report and advised them to take the deceased to the hospital for treatment. Later he (PW12) received a letter from Kikuyu Police Station directing him to arrest both PW1 and PW11. He arrested the two PW1 and PW11 and took them to Kikuyu Police Station where they were locked in the cells as the prime suspects but they were later released and treated as prosecution witnesses. PW12 visited the scene and recovered one broken club which had blood stains (exh.1) when the blood sample of the deceased as well as the blood stains found on the broken club were taken to PW16 JEREMIAH a Government Analyst for examination he formed opinion that the blood stains found on the broken club would have come from the deceased after he had been injured.

The accused DANIEL NGANGA NJIIRI in his defence denied the charge. In his evidence he told the court that he is employed by the Ministry of Water as a Pumb Operator attached to Nachu Area in Kiambu Distirct. He sells water to the villagers. On the material date the 2nd June, 2002 he left his home at around 7 p.m. and went to Starlight Bar to drink . He left the bar at around 8 p.m. to go home early because usually at the end of month travellers are attacked by thugs and robbed. After he had walked about 1 km away from the bar he saw some people emerge from a maize plantation on the side of the road. One of them threw a rope aiming to catch him by the neck and in fact that rope caught him by the neck. While he tried to remove it from his neck he was hit on the hand but he managed to escape. He went straight and reported the incident to the area sub-chief PW5 ISAIYA who advised him to go and make the report to the police at Kikuyu Police station the next day.

But when he reached the police station he was arrested and was later charged with this offence.

The prosecution to prove its case called 17 witnesses. But the only prosecution witness who identified the accused was PW1 Salome thus evidence of a single eye witness. Although a fact may, subject to well known exceptions, be proved by a testimony of a single witness, it is necessary to test that evidence of a single witness respecting identification with the greatest care, especially when the conditions favouring a correct identification are difficult.

The accused was attacked at about 7 p.m. It is at least crucial to ascertain the nature of the light available. What sought of light and its position relative to the suspect. These are all important matters helping to test the evidence with the greatest care. The witness did not have a torch and it was dark so that the conditions favouring a correct identification were difficult.

In such circumstances what was needed is other evidence whether it is circumstantial or direct, pointing to the guilty from which a judge or jury can reasonably conclude that the evidence of identification although based on the testimony of a single witness, can safely be accepted as free from the possibility of error.

In the present case the other evidence would have been that of PW11 Njuguna who was with PW1 Salome at the scene when the attack took place. But in his evidence PW11 said that he did not identify any of those assailants who attacked the deceased. This is despite the fact that the accused is a well known figure in the area where he sells waters of the Ministry of Water Development to the villagers according to the evidence of PW1. Secondly there was a broken club recovered from the scene which contained stains of human blood which according to the evidence of PW16 the Government Analyst that club might have been used to attack the deceased as the blood group of the deceased matched with the

blood group of the blood stains found on the broken club. But according to the evidence of PW1 she saw the accused attack the deceased with a fist. I consider that this fell short of the certainty that is required in a case of an identification by a single witness. There was no supporting evidence pointing at the guilt of the accused.

All the assessors returned a unanimous verdict of not guilty.

I accordingly find the accused not guilty of the charge of murder as charged and I acquit him.

Dated and delivered at Nairobi this 23rd day of September, 2003.

J.L.A. OSIEMO

JUDGE