



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL CASE NO. 16 OF 2000**

**REPUBLIC ::::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**KEAH KIPROTICH RONO ::::::::::::::::::::::::::::::: ACCUSED**

**Coram: J. W. Mwera J.**  
**10 J. Mutinda Advocate for Accused**  
**Orinda State Counsel for Republic**  
**C.C. Muli**

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

On 31.7.2000 the accused herein denied that on 25.9.98 at Kitui Township, Kitui, he murdered Pauline Mueni, his wife. The prosecution then called seven (7) witnesses while the accused gave sworn testimony in his defence.

Cpl. Benedict Mutua (P.W.1) in charge Kitui Police lines where the accused, a 20 policeman, lived with his late wife Pauline, heard shouts in the quarters occupied by the couple (along with another). He went across and noticed that the accused and his wife were quarreling. The deceased told Cpl. Mutua that the accused was not giving her enough house-keeping money. On his part the accused retorted that he had found his wife at a bar in town. This was at about 7 p.m. on 25.9.98. Further P.W.1 heard that the other cause of the row was that the deceased had taken the couple's child to her home in a village some 4 kilometers from Kitui town. And that on this account the accused had slapped the deceased. One Mwendu (Nancy Ndunda P.W.3) who lived with the other policeman in this quarter was present. So P.W.1 left the accused, the deceased and Mwendu getting into the house. He had cautioned the couple about quarrels in the police lines.

After a short time, P.W.1 saw people heading to the very premises he had been at. He went along only to find the deceased Pauline covered with a blanket. She was crying in pain. Mwendu (P.W.3) explained to P.W.1 that Pauline had poured paraffin 10 on herself and lit a match by which she was burnt. She had burns round the hips; P.W.1 arranged to have Pauline conveyed to hospital – Highrise Nursing Home. To P.W.1, when he first went over to the quarters occupied by the accused, his wife and the other couple, the three appeared drunk. He added that in the past the accused had quarreled with the deceased over lack of food in the house and that the deceased used to disappear from home.

The court heard in cross-examination that P.W.1 heard the accused also tell the O.C.S. that the deceased poured kerosene on herself then struck a match and set herself ablaze.

Patrick Maingi (P.W.2) was the deputy O.C.S. at Kitui Police Station at the time of the incident herein.

On 24.9.98 at 10 p.m. he had heard the deceased Pauline screaming. P.W.2 sent there officers who

returned an answer that the accused had been beating his wife. He was warned against that and he stopped.

At 6 p.m. on 25.9.98 while with IP. Kariithi, P.W.2 heard screams outside a café in the lines. They went there; he learnt that the accused had been dragging his wife to their house. When P.W.2 went to his house, IP. Kariithi came to inform him that the accused had beaten his wife and she had burnt herself.

10 Mercy (or is it Nancy?) Mwendu Ndunda (P.W.3) lived with and knew both the accused and his wife Pauline. On the evening of 25.9.98, the deceased returned to the house and asked where the accused was P.W.3 told her that he had gone out. She too left. At about 7 p.m. P.W.3 went to Kyelalini Bar. Later the deceased called her outside to inquire about one called Queen. As P.W.3 stood a little distance from the deceased, a man came and spoke to her. He was a prison officer. Mwendu started going home. The deceased enjoined her not to inform the accused where she was. On the way P.W.3 met the accused. P.W.3 was not able to go and warn the deceased that Rono was around, so he walked on only to find the deceased still talking to that prison officer. The latter fled into the darkness, the accused slapped the deceased and led her home. P.W.3 who had come near followed them. People separated the fighting couple. The accused tore her clothes and threw them away. P.W.3 took them. As the three walked home the accused wondered whether Pauline had taken home their child (Rono married Pauline while she had that child) only to turn to prostitution. That the deceased said that the two had parted ways. As they went on the couple continued to fight. When they got home, the two sat on their bed and appeared to go over the row by forgiving each other. It was at about 9 p.m. That Pauline who was feeling hungry was told by the accused to warm food on a kerosene stove. But that the deceased took the stove, poured out kerosene on herself and struck a gas lighter setting herself on fire. P.W.3 who was sitting on her bed behind some kind of sheeting saw all this. That the deceased bolted the door, stood upright and announced that all would perish in the fire. That Rono was causing her many problems. A curtain began to burn and the deceased screamed in pain, but she could not leave the door so that Rono and Mwendu would call for help. Rono was too drunk to be of much use and so P.W.3 called out to a neighbour. But the alarm could not go above Pauline's screams. She then opened the door at last and ran out. She fell down and some lines mates came over to help. The accused also got there. A blanket was brought and thrown over Pauline to put out the fire. Then she asked for water. That when the O.C.S. came to the scene the deceased told him that she had set herself ablaze because the accused was causing her lots of problems. A motor vehicle was brought and the deceased was taken to hospital. But before she left she asked P.W.3 to tell her, the deceased's sisters to care for her child. That P.W.3 visited the deceased at the hospital but she was transferred to Kenya National Hospital where she later died. In cross examination P.W.3 was firm that she saw the deceased douse herself with kerosene and set herself ablaze. That the accused did not do that.

The court then heard Margaret Musangi (P.W.4) of Matinyani village, the mother of the deceased Pauline Mueni. She knew the accused who visited her home with his wife, the deceased, to fetch the child spoken of earlier. The couple was married for 3 years. Rono paid dowry but he did not have a child with the deceased. On 25.9.98 at 11 a.m. the deceased took the child to P.W.4's home. She asked for food and then said that the previous day, the accused had given her only Sh.20/=. That when the accused asked for food and the deceased answered that there was no money to buy it, he beat her. The deceased then ate her mother's food and left. That the following day at about 10 a.m. one Queen brought a report that Pauline had been burnt. So P.W.4 visited her in hospital and observed the burns, allegedly caused by the accused. That Pauline had burns all over her body. That the deceased then told her mother that the accused had found her, Queen and another man at a place called Kyalalini. That he held and beat her as the man and Queen ran off. That in the house Rono took a stove, emptied its paraffin contents on the deceased and lit her up. That P.W.4 continued to visit and assist the deceased with her treatment. Later she was moved to Kenyatta National Hospital where she died. P.W.4 did not attend the post mortem done on Pauline but David Mutua Muwanga (P.W.5), Pauline's father did identify her body to the operating doctor Dr. Olumbe (P.W.6)

Dr. Olumbe observed that the deceased's body had deep and superficial burns all over her body save

the face. An element of infection had set in the wounds, lungs and kidneys. P.W.6 was of the view that death was due to the effects of the burns – 80% of the body surface (Exh.P1).

IP Meschack Onyango (P.W.7) was the officer in charge of crime at Kitui Police Station at the material time. When he took over the matter, it was alleged that the accused had burnt his wife. P.W.7 visited the victim at Highrise Medical facility. The deceased was talking as she underwent treatment. She gave a statement to P.W.7 (Exh.P2) in which she claimed that the accused burnt her. P.W.7 observed burns all over her body. The accused was then arrested and charged.

P.W.7 told the court in cross examination that the deceased told him that when the accused burnt her they were three people in the house – herself, Mwende (P.W.3) and the accused. P.W.7 could not recall what Mwende said in her statement which he took during investigation, but he could somewhat remember that Mwende told him, P.W.7, that the deceased poured paraffin on herself. That closed the prosecution case. The accused on oath went over the affairs of 25.9.98. He was in the house with the deceased and Mwende. He was drunk and got onto the bed to snooze off. 10 He was woken up by screams in the house. Pauline had set herself on fire; an alarm was raised; people gathered and threw a blanket over Pauline to extinguish the fire. He then asked Mwende what had happened and she told him that Pauline poured paraffin on herself and set herself ablaze.

The accused denied in cross examination that he burnt the deceased or that he did so due to constantly being asked by the deceased for house money. But he admitted that he had once slapped her for wandering about from home.

After final submissions and summary to the assessors, the latter returned oral 20 opinions of not guilty and this court agrees. Mwende Ndunda (P.W.3) was in the house with the deceased and the accused after the three had come from a place near Kyelalini Bar. The couple had quarreled and they fought on the way home. The accused dozed off on the bed. P.W.3 was firm and clear in her evidence that the deceased poured on herself paraffin from a stove and set herself ablaze. That the accused did not do such a thing. That he woke up to find Pauline burning and that Pauline had told Mwende (P.W.3) that he burnt herself because the accused was causing her lots of problems. That was the only direct evidence. The accused denied setting the deceased on fire. From all the evidence, this court is satisfied that the accused did not murder his wife as alleged and he is acquitted of the offence. Judgement accordingly.

**Delivered on 16th July, 2001.**

**10 J. W. MWERA**

**JUDGE**