



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO. 6 OF 2018**

**BETWEEN**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ANDREW WANGOLO PETER.....ACCUSED**

**RULING**

1. The prosecution closed its case hereof on 28<sup>th</sup> June, 2021 after calling twelve witnesses. In this Ruling, the court is considering whether **ANDREW WANGOLO PETER**, the accused has a case to answer.

2. The accused was on 29<sup>th</sup> January, 2018 charged with the offence of murder of **Esther Wambui Thumbi** deceased. The prosecution's case is that the deceased had employed the accused as a farm hand. In October, 2008, the deceased refused to pay the accused his October, 2008 salary giving the reason that the accused was adulterating her milk leading to it being rejected at the dairy. The accused reported the non-payment of his salary to the local chief who summoned the deceased. The deceased on attending at the chief's office declined the request to pay accused his October, 2008. On 11<sup>th</sup> November, 2008 deceased's body was found dumped in the borehole.

**PROSECUTOR'S EVIDENCE**

3. **Martin Gichuki Kamau** was the Deputy Manager of a farm at Ngenya village in **Lari Sub-County Kiambu**, while the deceased was the Manager. The farm comprised of 15 acres of which 9 acres had tea bushes. The deceased lived alone in the farm house while the farm workers lived some distance from the farm house. There were also some cattle shed about 10 metres away from the farm house.

4. The Deputy Manager stated that on the material date, he was supervising plucking of tea leaves. At 3.00 pm he went to the farm house, in the company of other tea pickers, to have the deceased, the farm manager, pay those who had picked tea leaves. The tea pickers were 15. When they arrived at the farm house, they found the door opened. They called out the deceased without any response. On reaching at the door, the deputy manager noted that the items inside the house were scattered all over. On checking the compound, they noted there was blood spots around the compound. The deputy manager informed deceased's in-law of what they observed and later when the police attended the farm with the assistance of a volunteer, the deceased's body was retrieved from the borehole. The deputy manager stated further that:-

**“The body had bloody clothes. The face had stabs... as we were looking for deceased at 3.00 pm the accused was not there. I had not seen him five days.”**

5. Prosecution's witness number 3 was **Gabriel Nganga Waruinge** Chief of Nyanduma Location at the material time. He stated in evidence that on 6<sup>th</sup> November, 2008 while he was at his office, two Ugandan men came to the office. They complained that the deceased had failed to pay their October, 2008 salary. The chief wrote a summons addressed to the deceased to attend his office on 10<sup>th</sup> November, 2008. On that day, the two complainants and the deceased attended the chief's office. They discussed the complaint of non-payment of salary of the two complainants by the deceased. The chief then stated in evidence:-

**“The deceased refused to pay saying she had already advanced moneys to them in October – she owed them nothing.”**

6. He further stated that the two men were very angry about the matter. The chief stated that the accused reacted by saying to the deceased:-

**“If you don't pay our money, we will take steps in revenge.”**

7. The chief said that on the following day 11<sup>th</sup> November, 2008, he learnt of the murder of the deceased. The chief on being cross examined stated that the two men who complained of not being paid their October, 2008 salary were employees of the deceased and the accused was one of those men.

8. As stated above, this is a Ruling on whether the accused has a case to answer. In the case, **REPUBLIC VS. JOSEPH SHITANDI & ANOTHER**, it was held thus:-

**“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”**

9. What this Court is required to consider was discussed in the case **REPUBLIC VS. JONES MUTUA ANTHONY & 3 OTHERS (2019) eKLR** thus:-

**“8. The question that this court has to deal with and answer at this stage is therefore whether based on the evidence before this Court, the Court after properly directing its mind to the law and the evidence can convict if the accused chose to give no evidence. It was therefore held in RONALD NYAGA KIURA VS. REPUBLIC [2018] eKLR wherein paragraph 22 it is stated as follows:**

**“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence.”**

10. In my view, the accused’s arrest and prosecution was merely on the basis of suspicion. In addition, the evidence adduced by prosecution is so contradictory that if the accused chose not to adduce evidence, there is no evidence that can lead to his conviction. I will set out the contradiction in the prosecution’s case herein below.

11. The Chief received complaint from two employees of the deceased who complained that the deceased had failed to pay their October, 2008 salary. After the attempt of arbitration by the Chief over that matter, the Deputy Manager of the farm stated in evidence that the deceased employed another employee to work on the compound of the farm. This Deputy Manager also confirmed that the accused was dismissed by the deceased following the summoning of the deceased by the Chief.

**12. Simon Mboche Thumbi PW2**, a farmer was a neighbour of the deceased. He knew the accused worked at deceased’s farm. This witness confirmed that in his statement to the police, he had informed the police that the deceased’s new employee had disappeared after the murder. This witness did not state who this new employee was. There was necessity of the prosecution to clarify which employee disappeared because the Deputy Manager clearly stated the deceased sacked the accused following her summoning by the Chief and more importantly because **Peter Wambari Thimba, PW4**, a step brother of the deceased, stated that he could not state the number of employees the deceased had. Similarly, **Andrew Wambari Thumbi, PW5**, brother to the deceased stated in evidence thus:-

**“She (deceased) lived with her workers but she lived on her own. There were tea pickers by day and others fending cows during the day at home, about 3 of them or so but I did not know them.”**

13. With that large number of people at the farm and some residing therein, it is not clear why the prosecution zeroed down on the accused as the one who committed the murder. Many people had access to the farm and to the deceased.

14. That evidence stated above of other people other than accused residing at the farm was contradicted by the children of the deceased specifically **PW7** and **PW10**.

15. In my view, the investigating of this case was very unsatisfactory. The killing of the deceased cannot be blamed on the accused to the exclusion of others who had access to the farm. Even if the accused told the Chief he would revenge for not being paid his October, 2008, that is not sufficient to lead to accuse3d being put to his defence.

16. Having considered the prosecution’s evidence, I do find that **ANDREW WANGOLO PETER** has no case to answer and accordingly, it is my duty to enter a verdict of not guilty and acquit him as which I hereby do as provided under **Section 306(1)** of the Criminal Procedure Code. I hereby order **ANDREW WANGOLO PETER** to be set free unless otherwise lawfully held.

**RULING DATED AND DELIVERED AT KIAMBU THIS 9<sup>TH</sup> DAY OF DECEMBER, 2021**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Maurice

For DPP : Ms. Kathambi/Kasyoka

For Accused :- Mr. Munene

Accused : **ANDREW WANGORO PETER** : Present

**COURT**

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**