



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO 38 OF 2016

REPUBLIC..... PROSECUTOR

VERSUS

GEORGE NJENGA CHEGE.....ACCUSED

JUDGMENT

1. The Accused, George Njenga Chege is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. In that on 15th June 2016 at Kiganjo Estate, Thika West Sub-County of Kiambu County, he murdered Joice Wangari. He denied the charges and was represented by Mr. Ng'ang'a. The prosecution, through eight witnesses presented the following case.

2. The deceased herein, Joice Wangari was the wife of the Accused and the two had been cohabiting for about 3 years by 2016. They lived in a place called *Kwa -Maasai* in Kiganjo area. In the month April of 2016, the deceased had reported to her sister Mary Wanjiku Kirathe (PW1) and her husband Francis Kirathe (PW2) that the Accused had issued threats that he would kill her, at one point stating to the deceased his intention to "*have her heart and liver*". The matter was reported to police at Makongeni *vide* OB No. 52 of 28th April 2016.

3. Police arrested the Accused but following the intervention of the deceased's family, he was released, and subsequent attempts made to resolve the couple's problems, without much success. Thus, the couple was advised to live separately from April 2016. While the Accused continued to live in the couple's old home at *Kwa Maasai*, the deceased moved out and occupied a single room at Rorie, Kiganjo with her young daughter. The Accused would however visit the deceased at her new residence.

4. On the 15th June 2014, Peninah Wambui, (PW4) an elder in-charge of Rorie village was called to the home of the deceased by an informant who said there was a problem there. It seems that a similar message was relayed to PW1, who in turn called PW2, with an urgent request that he proceeds to the home of the deceased to make inquiries. PW2 and PW4 were therefore among persons assembled at the plot where the deceased lived, on the material afternoon. They noted that the door to the deceased's house was locked on the inside and attempts by the gathered people to elicit a response from the occupants therein did not bear fruit. Eventually, a member of the public climbed onto the roof, removed some of the iron sheet roofing and entered the room. He then forced the locked door open.

5. The gathered persons, including PW2 and PW3 then entered the house where they beheld the wounded and half-naked body of the deceased in a pool of blood, while the Accused sat on the bed. He was covered in blood and was apparently injured in the abdomen. He was half-naked and did not utter a word to the gathered crowd. There was a blood- stained knife under the bed.

6. Presently, the local assistant chief, Mary Mumbi Njaci (PW5) also arrived, accompanied by police officers, including IP Harun Anunda (PW6) and IP Jared Onsongo (PW7) of Crime Scene Personnel. Police arranged for the transfer of the Accused to hospital and after documenting the scene, removed the body of the deceased. The postmortem examination was conducted on the next day, 16th June 2018. The postmortem report documents multiple incisive stab wounds on the body - 26 of them - on the face, neck, back, chest and forearm. The deepest stab wound being to the left chest wall and penetrating into the chest cavity and the largest being an incision measuring 17 cm long, to the left side of the chest wall. Internally, there was massive bleeding. Most of the left lung was damaged while the neck stab penetrated to the aorta, esophagus and the left ventricle. Death resulted from these stabs, according to the report. On his part, the Accused had been admitted in hospital and treated for a penetrating abdominal injury. He was eventually arraigned before the Court.

7. The following facts are pertinent to this case. Prior to the plea, the Accused was declared mentally fit to stand trial *vide* the letter dated 30th June 2016 by Dr. Muigai, a Consultant Surgeon at Thika Level Five Hospital. He then pleaded to the charges. A second mental assessment was carried out on the Court's orders. Once more, the Accused was found fit to stand trial. A third assessment was carried out at the request of the defence, based on the pre-bail report filed into court. Thus, is further mental assessment report dated 10th November 2016 was received by the court before the trial opened. The case proceeded without further incident.

8. However, upon being placed on his defence, the Accused had initially elected to make a sworn statement and to call two witnesses, but on the date of the defence hearing, counsel for the Accused informed the court that he had elected to remain silent. Whereupon the court

directed that a further mental assessment be carried out. A report filed into court on 6/6/18 stated that the Accused was not fit to plead citing unclear history, features of a delusional psychotic and mood disorders. An order was made on 2/8/18 for his treatment at Mathari Teaching and Referral Hospital.

9. A subsequent report by a Consultant Psychiatrist Dr. Kitazi, dated 18th September 2018 and filed into court on 3rd December 2018 indicated that the Accused was not fit to plead, citing his noted lack of insight, irrational and immature reasoning and possible substance abuse disorder. He was put on treatment but by 27th November 2018 had seemingly not recovered. A report of even date by a Dr. Kasavuli, a Consultant Psychiatrist filed into court on 3rd December 2018 contains a diagnosis of post-traumatic stress disorder. The Accused was again found unfit for trial. The court ordered on 12/2/19 that the Accused person continues with treatment. Eventually, on 21st May 2019 Dr. Mucheru Wang'ombe, a Consultant Psychiatrist filed into court a report that indicated his fitness to plead. The report is dated 2nd May 2019. The recommendation in the report is that he continues with his treatment. On 29.10.19 the Accused himself indicated that he was feeling better but was still under medication. A date was fixed for the defence hearing. Nevertheless, on the next scheduled hearing date, the 14th November 2019 the Accused through his counsel indicated that he had opted to remain silent. A judgment date was set.

10. The court has considered the prosecution evidence. That the deceased died a violent death from multiple stab wounds to vital parts of the body, is well documented in the post-mortem report [Exh.4). There can be no argument that the person who inflicted the 26 stabs on the deceased intended to kill her or to cause grievous harm. Various witnesses, including PW2, PW4, PW5, PW6, and PW7 have attested to the fact that on the fateful day, after a neighbor to the deceased raised alarm, members of public assembled at the door of the deceased's one-roomed house. They however could not enter as the room was locked on the inside. It took the initiative of one person who climbed onto the roof, removed some corrugated iron sheet roofing to enter the room and force the door open.

11. The sight that the witnesses PW2, PW4, PW5, beheld was graphically described by them in their respective testimonies. The deceased lay dead in a pool of blood on the floor, with multiple stab wounds, while the Accused sat on the bed, also covered in blood and bleeding from the abdomen. He did not say anything, beyond calling PW2 by his surname. A knife, also blood-stained lay under the bed.

12. There were only two people in the single room where the murder occurred. The door was locked on the inside when eyewitnesses arrived. All the proven facts point to the Accused being the person who viciously stabbed the deceased 26 times on vital parts of her body. The evidence by relatives of the deceased indicates that the Accused and deceased had recently separated due to marital strife, and that the Accused had previously threatened to kill the deceased. The evidence led by the prosecution was not in any way shaken during cross-examination of witnesses.

13. The principles applicable in dealing with a case where the prosecution case rests primarily on circumstantial evidence are settled. In *Joan Chebichii Sawe -Vs- Republic (2003) e KLR* the Court of Appeal restated the principles applicable in considering circumstantial evidence. The Court observed that: -

“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the claim of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”

14. This passage captures the principles pronounced in the timeless decisions on circumstantial evidence, namely *Republic - vs Kipkering Arap Koske [1949]16 EACA 135* and *Simoni Musoke -Vs- Uganda (1958) EA 715*. In *Musili Tulo -Vs- Republic [2014] eKLR* the Court of Appeal reiterated the need to closely examine circumstantial evidence before making an inference of guilt, the object being to ascertain whether such evidence satisfies the test elucidated in the cases of *Kipkering Arap Koske* and *Musoke*. In *Tulo's* case, the court restated the principles as

follows:-

“i)?The circumstances from which an inference of guilt is sought to ?be drawn, must be cogently and firmly established;

ii)?Those circumstances should be of a definite tendency unerringly ?pointing towards the guilt of the accused;

iii)?The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else.”

15. The Court went on to state that:

”In order to ascertain whether or not the inculpatory facts put forward by the prosecution are incompatible with the innocence of the Accused and incapable of any other reasonable hypothesis than that of guilt, we must also consider a further principle set out in the case of *Musoke -Vs- Republic [1958] EA 715* citing with approval *Teper -Vs- Republic [1952] A.C. 480* thus:

“It is also necessary before drawing the inference of the Accused's guilty from circumstantial evidence to be sure that there are no other co-existing circumstances which weaken or destroy the inference.”

16. The Accused herein, given the opportunity to make his defence elected to remain silent. He did not therefore attempt to explain how the deceased sustained the injuries leading to her death.

Section 111 of the Evidence Act provides:

“(1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist: Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence. (2) Nothing in this section shall— (a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged; or (b) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (1) of this section do not exist; or (c) affect the burden placed upon an accused person to prove a defence of intoxication or insanity”.

17. In the circumstances of this case, the evidence unerringly points to the Accused as the person who viciously stabbed the deceased and given the multiplicity and severity of the stabs, clearly intended to kill her. Evidently, the couple was estranged at the time due to marital strife, but the Accused went to the house of the deceased and no doubt viciously attacked her after locked the door. The court is satisfied beyond any reasonable doubt that the Accused is guilty of the offence of murder.

18. However, it does seem from the evidence of eyewitnesses and relatives of the deceased as well as medical reports that the Accused was at the time laboring under a mental illness at the time of the offence. The behavior of the Accused at the scene of murder, the viciousness of the attack on the deceased and previous conduct is anything but normal. Indeed, the assertions by PW1 that the Accused had once threatened to kill the deceased and had made a statement to the effect the deceased that he (Accused) wanted her heart and liver support this conclusion. Seemingly, the Accused was also suicidal, because in the absence of an explanation, it is reasonable to conclude that he inflicted the injury to his abdomen, after killing the deceased.

19. Therefore, despite the fact of the Accused’s mental ailment having come out late in the proceedings, it appears likely, from his described conduct, that the Accused was mentally ill during the murder incident. In the circumstances, the court makes a finding under Section 166(1) of the Criminal Procedure Code to the effect that, the Accused person, though guilty of the offence charged, was insane at the time of the offence.

DELIVERED AND SIGNED AT KIAMBU THIS 5TH DAY OF MARCH 2020.

C. MEOLI

JUDGE

In the presence of:

Mr. Kasyoka for DPP

Accused – Present

Court Assistant - Kevin