



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
CRIMINAL CASE (MURDER) NO. 52 OF 2015

REPUBLIC.....PROSECUTOR

-VERSUS-

SOPHIA WANGECHI KARANJA.....ACCUSED

J U D G M E N T

1) The Accused herein is **Sophia Wangechi Karanja**. She is charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars state that on the 2nd day of March, 2014 at Kingori Estate, Maai Mahiu Township in Naivasha District within Nakuru County jointly with others not before court she murdered **James Njoroge Ndirima**. She denied the charge and was represented by Mr. Njuguna.

2) The prosecution called nine witnesses. The gist of the prosecution case was that Accused resided at Maai Mahiu. She had rented a one-roomed dwelling from **Joyce Kariuki (PW1)**. She occupied the room with her two children, and at the material time she and the deceased were cohabiting as lovers although the deceased had a plot and a house nearby. He had left it and had moved in with the Accused, however.

3) On 2/3/2014 **Leah Wangari Njenga (PW3)** was resting at her house in Maai Mahiu. At 4.00pm a daughter of the Accused called Shiru came to her home with a message that **PW3** should go to the Accused's. After the child had gone the Accused came and reported to **PW3** that a neighbour called "Wa Ngina" had informed her that she had noticed blood stains at the house owned by Njoroge the deceased. She reported further that she had gone there and called out and elicited no response.

4) **PW3** suggested they request one "**Mama Ngendo**" to accompany them. The three proceeded there, called out but eliciting no answer. The Accused was reluctant to go in, but eventually she pushed the door open and said she had seen something akin to a human leg. **PW3** ran off and the three of them sought help from an older lady **Margaret Wangari Ng'ang'a aka Wang'ang'a (PW2)**. A crowd had gathered at the scene and "Wang'endo" stayed behind.

5) In the company of **PW2**, the Accused and **PW3** returned to the house. **PW2** noted blood stains at the doorstep. The Accused opened the door by pushing it. **PW2** went in. She noted a lot of blood in the bed room with clothes scattered about. The beddings were blood stained. It was dark and, not seeing much she notified the two ladies outside. The Accused's answer was a suggestion:

"You can't see a leg near drum?"

6) On looking again **PW2** saw a body in a squatting position behind a water drum. She came out to confirm that the deceased was no more. But she refused the Accused's suggestions to call his (Njoroge's)

mother, instead calling a nephew of the deceased **Joseph Muiruri Nganga (PW5)**. Also summoned to the scene was the deceased's mother **Mary Njeri Ndirima (PW4)** who presently came.

7) All the relatives present and other witnesses entered the house of the deceased. They saw that he had an injury at the back of the head. Reports were made to police. Meanwhile, the accused had left the scene. At 7.00pm **PW1** was called up as the Accused wanted to remove her children from her dwelling. She locked the room on departure. Police came and removed the body.

8) The police were called back to the house of the Accused after blood spots were noted at the door and wall. Police broke into the locked house and conducted a search. They found, under a bed, a pair of sport shoes identified as the deceased's. (Exhibit 2). They were blood spattered. On comparison with the blood samples of the deceased, the stains were found to match with DNA of the blood sample.

9) **Dr. Titus Ngulungu** conducted the post mortem examination on 6/3/2014. His conclusion regarding the cause of death was that the deceased succumbed to blunt head and jaw fractures leading to bleeding and contusion. The Accused was arrested at her family home at Karima and charged.

10) In her defence, the Accused gave a sworn statement and called one witness, her daughter, **V.W. (DW1)**. The Accused testified that her original home was at Kigesha/Karima and that though the deceased had been married to another woman, she had had a long relationship with him. It culminated with cohabitation 3 years before the offence, following the departure of the deceased's wife. The Accused and the deceased occupied a rental room at Maai Mahiu for which the deceased paid rent. They had moved out of the deceased house in the same neighbourhood due to objections by **PW4**. She had two children. She said that the deceased came home on the Friday, presumably before 1/3/2014. He left on the morning of 1st March 2014 wearing black laced shoes but never returned home.

11) On 2nd March, 2014 she and her two daughters travelled to church at Karima (her home area) and thereafter went home to assist her ailing mother, departing for Maai Mahiu at 5.00pm. On the way home one lady called **Mama Ngina** or **Wa Ngina** mentioned seeing streaks of blood at the house of the deceased. She went there and confirmed the report, calling out without a response.

12) The rest of her account is largely consistent with what **PW2** and **PW3** told the court; that she called them to the scene. That they forced the door open. That they found the body of deceased in the bedroom and the mother of the deceased was notified. The Accused denied having committed the offence or the existence of blood spots at her house. She said the sports shoes exhibited herein (Exhibit 2) herein did not belong to the deceased and she did not witness their retrieval from her home.

13) The Accused's daughter **V.W. (DW1)** testified that she was 16 years old and a secondary school student. She stated that the deceased was her father and was residing with her mother (the Accused), herself and a younger sibling at Maai Mahiu in the material period. She said that on the Friday (before 1st March 2014) the father came home. He knocked on the door but the mother did not open. On the next day which was 1st March, 2014 she woke up early to go to school and found her father's sports shoes (Exhibit 2) at the door of their house. There was blood at the door. After tuition, she went to her grandmother's at Kigecha/Karima where the Accused and younger sibling joined her later. They spent the night at the Kigecha and attended church there on the next day, 2nd March 2014.

14) As they returned to Maai Mahiu in the evening, the mother suggested they go check on his father at his house. They went there and knocked. The door was seemingly locked from inside. The Accused asked her to go home. On arrival she picked the father's shoes from the door and put them inside the house under the bed. She and her sibling were moved soon after to the home of their aunt, where she learned of the death of her father.

15) I have considered the evidence by the prosecution and defence as well as submissions by the latter. There is no dispute concerning the relationship between the Accused and deceased and the fact that they were cohabiting at Maai Mahiu in the material period. There is no dispute that on the evening of 2nd

March 2014 the Accused approached **PW2** and **PW3** and asked them to go with her to the house of the deceased. That the body of the deceased was found in the bedroom therein, bearing serious wounds. The body was in a squatting position behind a water barrel. There is no dispute that the deceased was seen/heard alive on the Friday preceding or the 1st March 2014 at the Accused's door or house. The date of the said Friday is 28th February, 2014 from the calendar.

16) The court must determine whether the prosecution has proved its case to the required standard. The prosecution case, as the defence rightly submits, is based on circumstantial evidence. The *locus classicus* regarding the principles applicable in considering such evidence is the case of **Kipkering Arap Koskei - Vs- Republic [1949] 16 EACA 135** where the Court of Appeal for Eastern Africa stated:

“.....In order to justify on circumstantial evidence the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and in capable of explanation upon any other reasonable hypothesis than that of his guilt, and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused.”

These principles were further expanded when the same court, in **Simoni Musoke -Vs- Uganda (1958) EA 715** adopted a further principle based on The Privy Council's decision in **Teper -Vs- Regina [1952] 2 ALLER 447** to the effect that:

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

[See also Choge –Vs- Republic 1985 KLR; Sawe –Vs- Republic [2003] KLR 364].

17) The deceased, admittedly came back home, presumably at night on 28th February, 2014 the Friday preceding the 1st March 2014. There is conflicting evidence by the Accused and her daughter as to whether he entered the house, the former saying he spent the night there, leaving on 1st March, never to return, while the latter says the mother did not open the door.

18) Be that as it may **PW2** and **PW3** testified that the Accused called them to the scene where the body of the deceased was found on the evening of 2nd March, 2014. In particular, **PW3** stated that the Accused first dispatched her daughter **Shiru** (diminutive of Wanjiru – **DW1**) to call her and when she did not go, the Accused came herself. **PW3** said that the Accused told her that another neighbour – Wa Ngina - had reported to her **“that she had seen blood at the plot where her husband lived”**. **PW3** was reluctant to go there without a third party, and so they got one **Mama Ngendo** to accompany them to the scene.

19) **PW3** stated that on arrival at the scene:

“The other lady (Wangendo) told the Accused to call out. The Accused refused. Then the other lady called out (the deceased name) told Sophia (Accused to enter. She refused. I told her we call another older lady to come and enter. We started to go, but Sophia went back and pushed the door open. She said “I have seen something” but she was standing at door. I ran off.....heard her telling Wang'endo that what she saw was like a human leg”

20) According to **PW3**, it was at that point that the older lady, **PW2** came on the scene. **PW2** said that the Accused and **PW3** who appeared frightened sought her out. She went out with them to the scene. She described the house as a 3 roomed dwelling standing alone in the plot and that there was blood by the door and the step.

21) **PW2** stated:-

“Door not locked. I pushed it but it did not open. Wangechi (Accused) was able to open the

door and I went in. Wangechi stood aside, outside. I saw nothing unusual in sitting room, only table and seat. I entered bedroom and saw lots of blood and clothes scattered all over..... The beddings were blood stained and on floor. At a corner I saw a drum. Room a little dark.....The two women remained outside. I did not see anything. Then I reported to them what I was seeing.

Wangechi said:-

“You can’t see a leg near drum?”

I checked again and saw body, almost squatting behind drum. Only leg was visible and a part of head. I got out and said Njoroge was dead. Wangechi asked me call and inform his mother. I said I could not but I rang a nephew of deceased..... Before he (nephew) came I called another person close by, another relative of deceased called Wangui. She came with her husband..... With Muiruri (nephew) Wangui and her husband we entered the house. With light shone head (of body) we saw an injury on head..... I and Muiruri went to report to police. Meanwhile the accused went to another plot.....we returned with police.”

22) In addition this witness, like **PW1** the landlady who had also been called to the scene on the same day stated in cross-examination that she also saw blood stains at the Accused’s door step on the next day, not having visited the house on 2nd March. **PW2** stated concerning the scene that:

“.....body of deceased was in a squatting position and one leg protruding behind the drum.....body was in socks and underwear.....on second occasion we entered the bedroom the husband of Wangui lit a torch and I was able to see injury to the head of deceased. Earlier I had not seen because room was very dark. There were blood stains on the veranda to the door.”

23) Evidently, there was no love lost between the deceased’s mother **PW4** and the Accused. However, **PW4**’s description of the deceased’s house matches that of **PW2**. **PW4** got to the scene before police arrived. She entered when they came. She said the main door to the house opened into sitting room and thereafter 2 other rooms with openings but no doors, but were partitioned by walls. She said:

“I entered the bedroom and had to go right at wall to see body of deceased squatting behind drum..... Eunice told me on 3/3/2014 there was blood from house of Accused”

24) Although Eunice did not testify, **PW4** acted on her information and proceeded to the house thereafter she saw the blood on door, wall and mat on door step then called police who broke the door and more traces of blood were noted. The deceased’s blood stained sport shoes (**Exhibit 2**) were found under a bed. In cross-examination on this aspect **PW4** said:

“Yes when Wangui called me I went to Wangechi’s house and on seeing blood at door we went and reported to police. Both times Accused not present. Police broke into the Accused’s house. The shoes.....were under the bed. The room is single and tiny. The bed is close to the door. I saw as if there had been attempts to wipe off blood from floor – apparent traces..... I entered house with two police officers”

25) This visit by police to the Accused’s room led to the visit as narrated by **PW1** of the Accused’s house on the next Wednesday – almost 3 days after the finding of the body. **PW1** said she found the house locked but she saw blood stains on the stairs and wall. In cross-examination **PW1** stated:

“The blood stains were on the step to the door and the wall. I only looked at the room in question because of stories I had heard regarding shoes removed from room”

26) The deceased’s nephew (**PW5**) also described the scene of the recovery of the body stating:

“I saw blood at sitting room. In the bedroom blood spread all over. There was a water drum at a corner. It was about 1 metre high and about half metre wide. He (Deceased) was in squatting position behind drum. You would not see his body, only drum.”

Regarding the state of the house he explained during cross- examination that:

“Only basic things in that room. He lived mostly with Wangechi. Only bed and drum in bedroom; a table and seat in sitting room.....yes, by peeping at door one could see the drum. The body squatted on the legs and leaned against wall behind the drum.”

27) The evidence of the witnesses **PW1 – 5** regarding the scene was confirmed by the **PW9**, the first police officer to visit scene. Although **PW9** was not one of the officers who recovered shoes from the house of the Accused on 3/3/2014 upon receipt of further reports, he arrested the Accused at her family home after the recovery of the blood stained shoes at her house. However, he too saw the blood stains at the Accused’s door. He also confirmed that from the main door one could, peeping see the area where the body was.

28) From all the foregoing, and the evidence of the Accused’s daughter (DW1), it is credible to conclude that the deceased’s shoes were retrieved from the Accused’s house a day after the body was traced several hundred metres away in a separate house. Only one pair of shoes were in contention in this case – Exhibit 2 and were identified by **PW4** in her evidence as the deceased’s. These shoes bore blood stains, which according to the Government analyst **H. K. Sang (PW8)** matched with a sample of deceased’s blood. The Accused’s denials concerning these shoes directly contradict her daughter’s evidence and cannot be true. Secondly, the presence of these shoes in her house, confirm the consistent evidence by **PW1, 2, 4, 5** and **9** that there were blood stains at the Accused’s door steps, wall and house.

29) The second fact that is intriguing is the Accused’s conduct as described by **PW2** and **PW3**, on the material date. Reviewing all the evidence by these two witnesses, it is as if the Accused was aware of the presence of the deceased’s body at the house where it was found. And surely even if innocent she could not have missed seeing the bloody shoes and spots on her house wall and doorstep at least on 1st March 2014. Most witnesses asserted there was insufficient visibility in the bedroom of the deceased to enable one to see the body of the deceased behind the water barrel. However, the Accused peeped once at the door and declared to have seen a human leg. **PW3** and others used a torch to see the body when they eventually entered. Notably at the time the Accused peeped and made the claims, **PW3** and Wangendo had started to walk away.

30) The body was in a most unnatural position, behind a one-metre high barrel in a barely lit room. The Accused had already seen blood at the veranda of the house. It is curious that the Accused claimed to see a leg in a dimly lit bedroom, from the door. And more curious that rather than call police, she looked for yet another person to enter the house on her behalf, before disappearing into another plot, and later going away to her family home several kilometers away. So that when the relatives of the deceased and police came, she was nowhere to be seen.

31) For a person who only hours before had been desperate to get someone enter the house of the deceased, that conduct is surprising. Unfortunately, police only retrieved the body on the evening of 2/3/2014 and made no inquiries as would have led them to search the Accused’s house immediately. Even so, it makes little difference that the Accused was unavailable, having removed herself, when the shoes were found on 3/3/2014.

32) The Accused’s defence was that the deceased left home on 1st March and never returned. Evidently this is something she never shared with **PW2** and **PW3** even as she asked them to accompany her to the deceased’s house. **DW1** said the deceased came home on the night preceding the 1st March but the mother did not open for him. Thus **DW1** did not mention seeing her father on the morning of 1st March as she prepared to go for tuition. However she said she saw the, father’s blood stained shoes at the door. On the other hand the Accused asserts that on the Friday (28th February) evening the deceased spent the

night at home leaving on the 1st March but not returning home. Even then, the Accused from her account went to church and spent all day at her family home at Kigecha without seemingly enquiring after his whereabouts.

33) Her daughter **DW1** said that she and her mother and sibling spent the night of 1st to 2nd March at the Accused's family home, only returning to Maai Mahiu in the evening. Whatever the case, **DW1** does not mention that on their return someone told her mother about the presence of blood stains at the deceased's home. The **DW1** stated that:

“Then my mother and sister came and we spent the night there (at grandmother’s house). We attended church and the three of us returned to Maai Mahiu in the evening. Mother said: “Let’s go see whether father is in his house.” But first we went to our house……”

34) If this account is true, then the Accused should not have known as she stated in her evidence, that the Accused did not return home on the night of 1st and 2nd March, and therefore had no reason to go in search of him at the home he rarely stayed in. On the other hand, if the Accused's account of the morning of 1st March is true, then **DW1** ought to have seen her father leave on the morning of 1st March, as she prepared to go for tuition. They shared a single tiny room. **DW1's** assertion that despite seeing, her father's blood stained shoes at the door on the morning of 1st March did not mention it to her mother is intriguing. What did she know?

35) And according to her, the Accused had refused to let in the deceased on the previous (Friday) night when he came knocking. It is clear, looking at the defence evidence that the Accused procured her daughter to tell half truths in court on her behalf, while she herself gave an incredulous account on the deceased's last moments to be seen alive.

36) The presence of the deceased blood-stained shoes at the Accused's house and the blood at her house and door steps, is in my view confirmation that the deceased, contrary to **DW1's** assertions entered the home on the night of the 28th February – the Friday preceding 1st March 2014. And that, while in that room, sustained a fatal head injury. Only the Accused and her two children were in the room. One must conclude that the Accused arranged for the injured deceased to be moved to the deceased's deserted home and pushed behind a water barrel. She then went to her home at Karima and on return was desperate to find out if the body, had been discovered. I believe the assertion by the Accused that one **Wa Ngina** drew her attention to blood at the deceased's home is untrue. Her own daughter contradicted this assertion. The Accused's strategy, it seems was to ensure she did not enter the house of the deceased alone and that the 'discovery' of the body, clearly engineered by her, was by a third party.

37) Reviewing the facts established by the prosecution regarding the recovery of the shoes at the Accused's home and the Accused's overall inexplicable conduct, it must be concluded that the deceased in fact died a violent death on the night preceding the 1st March 2014 in the Accused's house. He therefore could not come home on 1st March as suggested by the Accused, because he was dead already. And the Accused knew as much.

38) Section 111 (1) of the Evidence Act states as follows:-

“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 defense creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”

39) The Accused is the person who last saw the deceased alive in her house on 28th February, 2014. How he sustained a fatal head injury and his lifeless body eventually ended up dumped in the abandoned house are facts within the Accused’s knowledge. Her defence is not only riddled with material contradictions, but is also incapable of belief and I reject it. The intention to cause grievous harm or death to the deceased can be discerned from the severity of the head injury.

40) In the result, I am satisfied that the prosecution has through overwhelming circumstantial evidence established the Accused’s guilt beyond reasonable doubt. I find her guilty as charged and convict her accordingly.

Delivered and signed in Naivasha this 3rd day of **March, 2017**.

In the presence of:-

Miss Kavindu for the DPP

Mr. Njuguna or the Accused

Accused – present

CC – Barasa

C. MEOLI

JUGDE