



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 64 OF 2012**

REPUBLIC.....PROSECUTOR

VERSUS

CATHERINE WANJOGU KAHURA.....ACCUSED

**RULING**

The accused **CATHERINE WANJOHI KAHURA** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

**“On the 14<sup>th</sup> day of January, 2011 at Kangui Trading Centre in Nyandarua County, murdered GEORGE KARIUKI”.**

The accused pleaded ‘**Not Guilty**’ to the charge. Her trial commenced on 3/3/2014 before **Hon. Lady Justice Helen Omondi** who heard the evidence of four prosecution witnesses. The Honourable Judge was later transferred to the Bungoma High Court at which point I took over the matter and heard the remaining four (4) witnesses. A total of eight (8) prosecution witnesses testified in this case.

**PW1 MBURU MWANIKI** a boda boda operator told the court that on 13/1/2011 he was asleep in his home. At 4.45am he heard someone calling him. He recognized the voice as that of his friend ‘**George**’ (the deceased). **PW1** opened the door and deceased requested that **PW1** take him to his home. **PW1** obliged and took the deceased to his home on his motor-bike. The deceased paid him the fare of Ksh 300/= and **PW1** left. The following day at 11.00am, **PW1** received news that the deceased had died due to poisoning.

**PW6 JULIA WAIRIMU** was the deceased’s second wife. She told the court that on 13/1/2011 she went to work in her shop near their homestead. The deceased also left taking their child to school. However the deceased did not pick the child from school that day as was expected.

**PW6** stated that she spoke to the deceased at 4.00pm and all seemed well. He later phoned her at 2.00am and said ‘**Mambo si mazuri**’ ie ‘**Things are not good**’. Then at 6.00pm the deceased phoned **PW6** telling her to meet him at home. **PW6** left her shop and rushed home. She found the deceased in an anxious state. He handed her his mobile phone and a letter before collapsing.

**PW6** called for help and neighbours came and rushed the deceased to Naivasha Hospital. He was admitted but died whilst undergoing treatment. **PW6** read the note which the deceased had left her. In it is stated that ‘**Catherine Wanjogu**’ (the accused) knew what had happened to him and the deceased also

left instructions regarding the division of his properties between his 2 wives.

The matter was reported to police. The accused was later arrested and charged. At the close of the prosecution case this court is required to analyze the evidence on record with a view to determining whether a prima facie case has been established sufficient to warrant placing the accused onto her defence.

The definition of what constitutes a prima facie case was given in the case of **RAMANLAL T. BHATT Vs REPUBLIC 1957 EALR**. Where the court held as follows

***“..... it may not be easy to define what is meant by a ‘prima facie case’ but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.***

In this case the fact as well as the cause of the deceased’s death are not in any doubt. **PW4 ANNE WANJIRU** who was the 1<sup>st</sup> wife of the deceased and **PW6** the deceased’s second wife both confirm that they saw and identified the body of their husband at the Nakuru Municipal Mortuary on 19/1/2011.

**PW8 DR. TITUS NGULUNGU** the Government pathologist testified regarding the cause of death. He told the court that an autopsy conducted on the body of the deceased revealed the presence of blackish contents with corrosion of the gastro-intestinal tract in the stomach. The cause of death was opined to be **‘poisoning by unknown corrosive chemical which led to systemic failure of all systems including heart and lungs’**. The post mortem report duly filled and signed was produced as an exhibit in the case **P. exb 2**. This was expert medical evidence which was not challenged nor controverted by the prosecution. Indeed all the prosecution witnesses testified that they had reason to believe that the deceased has ingested a poisonous substance.

Having proved the fact as well as the cause of death the prosecution is required to go further and tender evidence to prove beyond reasonable doubt that it was accused who either fed or caused the deceased to ingest this poison. The exact nature of poison (chemical) ingested by the deceased is not known. No empty bottles were found near him and no chemical analysis was conducted on the contents of his stomach. However all the witnesses state that the deceased ran an Agroveter shop and **PW6** his wife told the court that they kept most of their stock including pesticides in their store at home. Thus the deceased had easy access to a variety of poisonous substances.

The accused **‘Catherine Wanjogu’** was apparently an employee of the deceased in his shop. Nobody saw the accused and the deceased together that day. Nobody saw accused feed the deceased with any drink or meal whatsoever.

The accused was considered as a suspect because it is alleged that in the note he gave, **PW6** the deceased mentioned her name. **PW6** herself had no idea at all what role (if any) the accused may have played in the death of the deceased. Under cross-examination by defence counsel **PW6** stated thus

***“The deceased died due to poisoning. I did not see how he ingested the poison. We had a lot of pesticides in our house...”***

**PW6** goes on to state

***“I cannot tell if the deceased committed suicide...”***

As stated earlier the accused was arrested and charged on the basis that the deceased named her in a note that he handed to **PW6** before he collapsed. His note was produced as an exhibit **P. exb 1** and I have perused the same. It is basically a rant by a seemingly unhappy and stressed man against those whom he perceived to have offended him. Aside from claiming to have been harassed by the accused (the nature of this harassment is not expounded on) the deceased also made very negative comments against **PW4** his first wife whom he accused in the following words

***“umenitesa sana and you gave me a cold war and abuses, lack of respect hatred and you pulled my te\*\*\*\*\*.....”***

The court is not told why police did not equally treat **PW4** as a suspect. No reasons are given why police chose to zero in on the accused and leave out **PW4** who was also mentioned negatively in the note. Nowhere in this missive did the deceased allege that the accused had caused him to eat or ingest any poisonous substance whatsoever. The mere fact that the deceased named the accused as one of the persons who was **‘frustrating him’** does not make her responsible for his death at all.

All in all I find no evidence to suggest that the accused committed any unlawful act which led to the death of the deceased. The tone of note gave a picture of a man who was unhappy, frustrated and stressed. The very real possibility that the deceased committed suicide has not been ruled out.

**PW7 INSPECTPR JOASH ADURO** was the officer who investigated this case. He told the court that his investigations revealed that the accused had spurned the deceased’s attempts to marry her leading the deceased to become desolate and to commit suicide. In his evidence **PW7** said

***“My own honest belief is that the deceased killed himself by ingesting poison. I believe that he killed himself due to frustrations.....”***

In view of this candid declaration of belief by the investigating officer this court is left to wonder why on earth the accused was subjected to the rigours of a trial. There is not an iota of evidence linking the accused to the death of the deceased. Indeed all the evidence points to the fact that the deceased committed suicide. This whole trial has been a waste of judicial time.

No *prima facie* case has been shown. I enter a verdict of **‘Not Guilty’** and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless she is otherwise lawfully held.

Dated and Delivered in Nakuru this 21<sup>st</sup> day of July, 2017.

Ms Oliech for accused

Mr Chigiti for DPP

**Maureen A. Odero**

**Judge**