



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

CRIMINAL CASE (MURDER) NO. 7 OF 2015

REPUBLIC.....PROSECUTOR

-VERSUS-

JAMES WAWERU KIMANI.....ACCUSED

R U L I N G

1. The Accused herein was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. In that on the 31st day of July, 2013 at Kihoto Estate, Naivasha District within Nakuru County, he murdered **Pauline Wambui Njoroge**. He denied the charges. At the trial he was represented by Mr. Owuor.
2. Through seven witnesses the prosecution advanced the case that during the material period, the Accused was a boyfriend to the deceased, although there is a conflicting evidence regarding whether they were also cohabiting in the Accused's house.
3. The Accused lived at Kihoto within a fenced plot with several rental houses, which were owned by his cousin, **Peter Chege Waweru (PW1)**. A sister of the Accused **Mary Njoki Kimani (PW2)** also resided at the same plot.
4. On the morning of 31st July, 2013, the body of the deceased was found lying within the plot owned by PW1. It lay close to the gate, and some distance from the house of the Accused. A report was made by the deceased's father **Grishon Njoroge Gathu (PW3)** to police. The body was collected and the scene visiting officers who included **PC Michael Gichanga (PW7)**. They also broke into the house of the Accused who was apparently away. They did not make any significant findings.
5. A post mortem conducted by **Dr. Ngulungu (PW6)** found minor head injuries but also evidence of brain eschemia (lack of oxygen in the brain). His initial conclusion was that poisoning was involved. He took samples of the blood, stomach chime, fluid from eye balls, kidney and liver which were forwarded to the Government Chemist for analysis.
6. The Government Analyst's report (Exhibit 2) confirmed that the deceased's stomach sample contained a pesticide, an organophosphate identified as diazinon. Methanol and alcohol were found in the blood sample. According to **Doctor Ngulungu** both methanol and diazinon are poisonous and caused the death.
7. The defence submissions highlight the fact that there is no direct evidence linking the Accused to the death. While PW1 and PW2 freely admitted that the Accused was present in his house on the evening of

30th July, 2013, none of them was willing to confirm any relationship between him and the deceased.

8. No witness testified to have seen the deceased in the house of or in the company of the Accused on the night preceding death. The plot itself had other residents, who police inexplicably failed to interview. The circumstances in which the deceased ingested the poisonous substance, and ended up lying dead in the open but in PW1's compound are not known.

9. Equally, there is no explanation for the head injuries albeit minor, observed on her head at the post mortem. This was a poorly investigated case. It seems that the Accused was treated as a suspect and arrested because of his alleged relationship with the deceased, but no further inquiries were made.

10. The prosecution evidence does not rise up to the threshold of a prima facie case. It is my finding that in accordance with Section 306 (1) of the Criminal Procedure Code, the Accused is not guilty. He is acquitted of the offence and is to be set at liberty unless otherwise lawfully held.

Delivered and Signed at Naivasha on this **14th** day of **July, 2016**.

In the Presence of:-

For the DPP : Mr. Koima

For the Accused : Mr. Obino holding brief for Mr. Owuour

Accused : present

C/A : Barasa

C. MEOLI

JUDGE