



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 16 OF 2014 (MURDER)**  
**(CONSOLIDATED WITH HCR. 15, 14 & 13 OF 2014)**

**REPUBLIC..... PROSECUTION**

**VERSUS**

**LUCY WANJA KIMANI..... 1ST ACCUSED**

**ANN WANGARE MUCHIRI.....2ND ACCUSED**

**DENNIS MBAE MUTEGL.....3RD ACCUSED**

**MUTHONI KIMANI.....4TH ACCUSED**

**RULING**

This is an application made orally by Mr. Mungai counsel for the 1st & 3rd accused. He argued that the charges do not agree with the statement of offence. If the case proceeds as the charges are framed, the 1st and 3rd accused will be denied fair trial. The counsel submitted that the persons are charged with the offence of murder yet the particulars of the charges relate to the sale of alcoholic drinks. The date and place of the offence are the same in all the counts. The charges are not properly framed so as to connect the accused persons with the offence of murder. The accused must be connected in that mens rea and actus reus must be reflected in the particulars of the offence. The 1st and 3rd accused will not get fair trial if the case proceeds as it is. The charges are defective and unsustainable and the prosecution must provide the correct particulars to the charges. The prosecution has a duty to expound the particulars of the charge as per the constitution and penal code. It was further argued that the charge ought to indicate the weapon used to kill the deceased.

Mr. Andande the counsel for the 2nd and 4th accused adopted the submissions by counsel for the 1 & 3rd accused.

Mr. Onjoro for the state submitted that the charges were properly framed. The defence was asking the prosecution to include evidence in the charge sheet. The evidence in support of the particulars is yet to be called. It is not necessary to include anything in the particulars. The particulars as provided are sufficient to support the statement of offence. The charge should not include the weapon used for murder according to the State. It should include the weapon used to murder and so on.

Section 134 of the Criminal Procedure Code provides what the components/ingredients of the charge sheet constitute. It provides as follows:-

*"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the*

*specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."*

The accused persons are charged with 12 counts of murder in file No. 15 & 16 both of 2014. The statement of offence and the particulars of the charge including the date and place of the offence are the same. The only difference in the charges are the names of the deceased persons. The court will take count 1 in file No. 16 of 2014 as an example of how the charges are framed.

### ***Statement of offence***

*Murder contrary to Section 203 as read with Section 204 of the Penal Code.*

### ***Particulars of offence***

#### ***Count I***

1. Lucy Wanja Kimani 2. Ann Wangare Muchiri 3. Dennis Mbae Mutegi 4. Muthoni Kimani: On the 5th day of May, 2014 at Shauri Estate in Embu County jointly with others not before court murdered PATRICK NDWIGA NJAGI.

Mr. Mungai for the 1st and 3rd accused argued that the accused persons are charged with the offence of murder and yet the particulars of the charge relate to the sale of alcoholic drinks. This allegation is not true since the particulars of the charge are about the accused persons murdering the deceased named in the charge sheet. I find nothing related to alcoholic drinks in the particulars of the charge unless the counsel was referring to the evidence in support of the charges.

In the case of ***SIGILANI VS REPUBLIC [2004] 2 KLR, 480*** it was held that:-

*"The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence should be disclosed and stated in a clear and unambiguous manner so that the accused maybe able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence."*

Section 203 of the Penal Code describes the offence of murder as follows:-

*"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."*

In the case of ***MARENYA VS REPUBLIC [1985] KLR 668*** it was held:-

*"A charge and its particulars ought to be clearly framed, so that the accused persons can know what they are charge with and proper reference should be made in the charge otherwise a confusion may arise which may lead to a failure of justice".*

From the description of the offence of murder under Section 203 and the authorities cited I am of the considered opinion that the charges are properly framed and that they consist of sufficient particulars to give reasonable information as to the nature of the offence charged. The charges are capable of being understood by the accused persons in order to facilitate them to prepare for their defences.

I agree with the prosecution that the evidence to support the charges need not be included in the particulars of the offence. The evidence will be adduced during hearing in support of the charges. It is from that evidence that the unlawful act caused by the accused persons and which resulted in the death of the deceased persons will be disclosed.

Mr. Mungai also argued that the weapon used in murdering the deceaseds ought to appear in the

particulars of the offence. The offence of murder must be distinguished with other offences like robbery with violence or obtaining by false pretences where the particulars of the charge must set out some act or intention of the accused in order to bring out the ingredients of the offence.

I come to the conclusion that the charges in file No. 15 & 16 both of 2014 are properly framed. The application by the accused persons is therefore disallowed.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF OCTOBER, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**The four accused persons**

**Mr. Andande for 2<sup>nd</sup> and 4<sup>th</sup> accused and holding brief for Mr. Mungai for 1<sup>st</sup> and 3<sup>rd</sup> accused.**