



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO.37 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

ALEX DIMBA ADHOLA.....ACCUSED

JUDGMENT

ALEX DIMBA ADHOLA (the accused) faces a charge of murder contrary to **section 203** as read with **section 204** of the **Penal Code**, that on the night of 21st/22nd February 2008 at MOUNT SINAI LODGE in Nakuru Town, he murdered MIRIAM NJOKI THIGE (Deceased).

The accused who was initially was represented by Mr. Ogola, and later Mr. Kipkoech, denied the charge. It is common ground that the accused and the deceased were lovers, both being students at Egerton University.

According to deceased's father, **ABRAHAM THIGE GITHUNGE (PW8)** the deceased left their Kinangop home on 21/02/2008 to travel to Nakuru and proceed to Egerton University. He later spoke to her on the same day at 7.00 p.m., and she confirmed that she was on her way to college. The next day and days that followed, he attempted to reach her on phone, in vain, and he even sent his son Gilbert to the University to confirm whether she had arrived, only to learn that she had not reported to the college.

Meanwhile, according to **VIRGINIA WAMAITHA (PW1)** who worked at Mount Sinai Hotel, the accused arrived at the hotel at about 3.45 p.m. on 21/02/2008 and asked for a self-contained room. After viewing two rooms, she assigned him room No.22. He said he did not have his national identity card. He gave his address and was issued with a receipt. The counterfoil for the receipt was produced in court as Exhibit. The name he gave was Charles of Box 536 Njoro, I/D Card No.23350521. After being issued with the receipt, the accused said he had given the wrong identity card number and changed it to 23352150. He was given toiletries, then he went to the room. After a short while the accused left the hotel, and returned half an hour later, accompanied by a woman (who PW1 only saw from the back). PW1 did not see the pair again that day because she handed over duties to Susan Waithera at 6.00 p.m.

The next day at 8.00 a.m., Susan gave PW1 Kshs.400/= paid for the day's occupancy, with information that accused had gone for tea and would come back. He however did not return, nor did he hand back the room keys.

SUSAN WAITHERA (PW2) told this court that while on duty on 22/02/2008, at 8.00 a.m., people came out of the rooms, and one person gave her a receipt for room 22 bearing the name Charles. The person also gave her Kshs.400/= but she did not issue him with a receipt. She saw the person well and identified

him as the accused. When PW2 asked him for the key, he said, he would return; but he never did.

After five days, a cleaner named **LINET**, informed PW2 that there was a terrible smell emitting from room 22, so the hotel owner **JOHN MACHARIA NGANGA (PW3)** was informed, and he in turn notified the police. Since the accused had not returned the room keys, the lock was broken to gain access, and inside the bathroom was the naked body of a girl, with a wire on the neck. There were two empty bottles of vodka and it turned out the body was that of **MIRIAM NJOKI THIGE**, which was identified by her father Abraham (PW8), her uncle **AYUB KAMAU THIGE (PW6)** and her aunt **RUTH WANGARE (PW9)**.

A post mortem conducted by **DR. OMBOGA** whose report was produced by **DR. TITUS NGULUNGU (PW11)** recorded that there was marked synopsis (blue – due to lack of oxygen), bruise on the mucus membrane, protruding tongue, decomposition at the neck with a wire string loose around the neck. Internally the lung was congested with fluids, and the cause of death was strangulation.

SNR SGT. JULIUS OMARI (PW10), who investigated the case established that when the accused left the room the next day, he gave instructions that he would return, and the room was not to be disturbed or opened, as he had left his luggage there. As a consequence, the room was not opened for two days after the accused's departure. Upon recovering the body of the deceased, PW10 took it to the mortuary and took the fingerprints which were forwarded to the Registrar of Persons, alongside the identity card number which the accused had given. A letter from the Registrar of Persons (Exhibit 5) identified the fingerprints as belonging to **MIRIAM NJOKI THIGE**, and identity card No.23352150 belonged to **CHARLES NJUGUNA WAIGANJO**, while identity card No.23350521 belonged to **CHARLES NDENGA**.

The investigations disclosed that **CHARLES NDENGA(PW4)** was a student at Egerton University, who upon being arrested confirmed that the accused had been his friend and roommate in year 2007, but they parted ways because PW4 was losing items at an alarming rate. Of significance to this was the loss of his national identity card, and the sudden change in the identity card he had, to one which was fake, yet he could not understand how that change in the card had happened. There were withdrawals made from his Post Bank Account using his identity card, and he was stunned when he was arrested on 7/3/2008 and shown a receipt book which bore an identity card number similar to his, and with the name **CHARLES**. When he eventually confronted the accused for an explanation about the use of his identity card, the latter sent him to the University notice Board where he found the identity card.

PW4 thus told the police, he suspected the identity card was stolen when he shared room with the accused. This and the fact that the deceased was the accused's girlfriend, and the accused was not at Egerton University at the time the deceased was missing, led PW10 to focus on the accused.

Furthermore, the accused had sent an SMS to **TRIXIE AKINYI (PW7)** a close friend to the deceased who was desperately looking for her friend, to:-

- a. Go to Central Police Station to find out about the deceased.
- b. That he had left college for Narok to a certain forest to kill himself,

This led police to search for and eventually the accused was handed over to police by his father.

In his sworn testimony, the accused confirmed that he had dated the deceased for close to 5 years and they had good and happy years together.

Although they were expected to report to the university on 22/02/2008, he reported on 07/03/2008 because there was always a 14 days window period for late reporting.

After about ten days, he received a call from his step father to the effect that CID officers were looking for him. He came to Nakuru Town on 18/3/2008 and met his step-father **SAMUEL KOLALE**, with SGT

OMARI and CPL GITUMO of CID, who requested him to accompany them to their offices to assist with investigations into the murder of MIRIAM NJOKI THIGE. An identification parade was conducted and PW1 picked him out, after she had checked the parade members thrice, and been urged to talk to the members.

It is his testimony that he learnt of the deceased's disappearance from PW7, and he made attempts to reach the deceased on phone in vain. He denied being a close friend to PW4, saying they would only meet in class and in group discussions. He confirmed that PW4 complained about loss of his identity card and Post Bank Pass Book, but he had nothing to do with that.

According to the accused, he and the deceased were so in love, and expressed this love in a **"shared"** manner (I presume he means they had sex) and he in fact intended to settle down with her upon completion of their university studies. He had no problems with her that would lead to him killing her and describes her death as a double tragedy which had landed him in jail, and also resulted in him losing someone who was dear to him.

On cross-examination the accused explained that he always reported within 2 weeks of the beginning of a semester, and not necessarily on the first day. He denied having communicated with the deceased on 22/02/2008, and said he had not met PW1 before the date she picked him at an identification parade.

It was his evidence that he last spoke to the deceased about 1½ months before the incident because at the time, there was the post-election violence, and he could not get to her easily.

The defence counsel submitted that, the prosecution had failed to prove its case beyond any reasonable doubt. He pointed out that no witness testified that an identification parade had been conducted, and since the accused was not arrested at the *locus in quo*, then he could not be said to be the one who committed the offence.

He also faulted the telephone communication which was alleged to have been made between the accused, and PW7, saying no records were produced from Safaricom to confirm that, and PW7 could not even provide the number from which the accused was calling her.

Defence counsel further argued that PW4 whose documents were allegedly used by the accused, and who should have been the star witness, did not link the accused to the murder. As for the confessionary statement accused was alleged to have made, he retracted the same and counsel terms the same as worthless.

It is his contention that the accused sufficiently explained that he'd not been in regular communication with the deceased as he could not afford the luxury of frequent phone calls. He further contends that the evidence simply creates suspicion against the accused, which is not sufficient to sustain a conviction.

Mr. Marete on behalf of the State submitted that the evidence led by the prosecution clearly showed how the accused booked a room and thereafter tried to conceal his identity. He went into the hotel room accompanied by the deceased, then left in the morning without her.

He also urged this court to consider that the evidence by PW2 corroborated what PW1 said, and that both PW1 and PW2 positively identified the accused at an identification parade. Further, during examination in chief, the accused confirmed that he was positively identified by the two ladies. He implored the court to pay regard to the statement made by the accused, saying claims that he was forced to make the same are not true as this was never raised during cross-examination.

It is not in dispute that the body of MIRIAM NJOKI THIGE was recovered from room No.22 at Mount Sinai Lodge in Nakuru. It is also not disputed that the accused and the deceased were lovers. No one witnessed the actual killing of Miriam, but the prosecution's contention is that the circumstances are such that the facts inculpably point to the guilt of the accused and no one else.

The witnesses who testified in court did not see Miriam's face, but PW1 recalled seeing the accused heading towards his hotel room in the company of a woman who was carrying a bag.

The person who booked room No.22 gave his name as Charles, and an identity card whose number matched the one belonging to PW4. PW4 had shared a room with the accused in their student days, and had actually lost his card and Postbank Passbook. In fact they parted ways because of the manner in which PW4's property was disappearing from the room, yet it was only him and the accused who had keys to access the shared room. After the news of Miriam's death became public, accused told PW4 that he'd found his identity card at the University Library. It is significant that when the customer at Sinai booked the room, he told PW1 that he did not have his identity card, but knew the number off head – which number he gave to PW1.

Both PW1 and PW2 confirmed that the accused is the **“customer”** who booked room 22 and indeed they picked him out at an identification at the parade. The issue of identification at the parade cannot be a contest since even the accused confirmed in his testimony that indeed the two ladies identified him. PW1 and PW2 did not just have a fleeting glance of the accused, they spent a considerable amount of time with him- especially PW1 who spoke to him and took various details. PW1 had a chance to see the accused thrice on 21/2/2008:-

- a. When he first came to the hotel at 3.45 p.m. and gave his details and went with her to see the rooms before settling for room 22.
- b. When he left briefly for about ½ hour.
- c. When he returned accompanied by a woman.

PW2 had occasion to see the accused on 22/2/2008 at 8.00 a.m., receive money from him, and they even had a brief chat, with accused saying he'd gone for tea and would be back.

It is also significant that the woman who was seen accompanying the accused to room 22, never left that room or the hotel.

Which other woman could this be? The woman's father Abraham Thige (PW8) confirmed that his daughter left their home on 21/02/2008 for Nakuru to travel to Egerton University. He later spoke to her at 7.00 p.m., when she confirmed to him that she was on her way to college. Of course what a young girl does, and what she tells her parent she is doing, may not necessarily be the same thing. I say this because, the deceased's friend Trixy Akinyi (PW7) met the deceased on 21/02/2008 for a drink, and after ½ hour they parted ways. The deceased said she was going to school.

The next day PW7 could not get her on phone, but at 2.00 p.m., she received a text, purportedly from the deceased saying her phone had a weak battery, and any further attempts to reach her were futile. It is difficult to tell whether it is really the deceased who sent that text, or whether someone else, who had access to her phone, was the one sending messages to make it appear as though she was still alive. My analysis of the situation is that the deceased never left Nakuru Town for Egerton, instead she met her boyfriend (the accused) and is the woman PW1 saw with him. That would explain how her body ended up in room 22 at Mount Sinai Lodge.

Admittedly all these are circumstantial considerations, and the case of **R V KIPKERING arap KOSKE and another (1949) 16 EACA pg 13** set out the place and effect of circumstantial evidence that:-

“Such evidence is sometimes compared to a chain, with its links as a rope with several strands, each link or strand must be carefully tested and if in the end, it does not lead to the irresistible conclusion of the accused's guilt, the whole chain or rope must be rejected. If it passes the test, it is as good as any direct evidence.”

In this instance the chain of events, the conduct of the accused (his leaving the hotel on pretext that he'd come back later), the concealment of his identity, using the identity card of a fellow student, the

companion never leaving the room – all these strands are not broken or interfered with by any other person or even. His defence is intended to hoodwink the court. I reject it as being unbelievable, deliberately calculated to make it appear as though he was not within Nakuru County on 21st and 22nd February 2008. PW1 and PW2 positively identified him and there can be no case of mistaken identity. I am convinced that accused is the one who lured the deceased to her death, and in fact murdered her. The circumstantial evidence points inculpably the guilt of the accused, and to the exclusion of any other person, and I make a finding of accused being guilty as charged.

Delivered and dated this 10th day of February 2014 at Nakuru.

H.A. OMONDI

JUDGE

Court

Accused in mitigation considered and being a first offender. I consider the provisions of Article 26(3) of the Constitution. Unfortunately in the recent past decisions, the Court of Appeal has categorically stated that when there is no specific provision for court to mete a lesser sentence, the judicial officer is bound by what the statutes provide, which in this case is death. Consequently accused is sentenced to death as provided by law. He has 14 days right of appeal.

H.A. OMONDI

JUDGE

10/02/2014