



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 28 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

BEATRICE WAIRIMU MUREITHI.....ACCUSED

JUDGMENT

1. Beatrice Wairimu Mureithi is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, (*Cap. 63, Laws of Kenya*). To prove murder, the prosecution must show by evidence that there was malice aforethought, that is to say, that the accused intended to kill another person, or cause him grievous bodily harm as provided by Section 206 of the Penal Code.

2. The Prosecution alleged that the accused on the 26th day of March 2010 at Kahatia Farm, Nakuru North District within Rift Valley Province, murdered Joseph Ngugi Mwangi (*the deceased*).

3. One of the major ingredients of the offence of murder is that there was a killing. The evidence of PW1, the Doctor, and PW11, the scenes of crime officer, showed the injuries the deceased suffered. Whereas the evidence of PW1 showed injuries in graphic photographic form, wound on the chest and left leg of the deceased, PW1 described those injuries in his evidence, and produced a Post-Mortem Report (PEXh. I) and the injuries included multiple bruises on the chest and abdomen, multiple pectoral bruises running deep to the intercostal muscles with lung contusions. The head had linear skull fracture at the coronal direction with depression at the right side. The nervous system had right subdural haematoma. The Doctor concluded that the cause of death was due to head injury due to blunt trauma consistent with blunt force application. There was therefore death of the deceased. The circumstances of the injuries and death of the deceased are consequently described in the evidence of PW2 to PW10.

3. The evidence of PW2 described the circumstances under which he found the deceased firstly on the night before the accused reported to him that a person was found lying almost dead next to his plot in which he used to operate a bar. PW2 had left the deceased drinking at the Bar Counter on 25.03.2010, while the accused was having a drink with another man, he came to the know later as Waweru. The accused was a friend of both Waweru and the deceased. After drinking, the accused and Waweru retired to the accused's quarters and slept. The deceased, being a friend of the accused, also wanted to spend the night with her. He followed her to her house. The accused having esconced herself with Waweru, refused to let the deceased into her quarter. The deceased, described, as a well built man, broke a window to the quarter and entered the accused's bedroom.

4. Alarmed with the unwelcome intrusion, the accused woke Waweru up who did not welcome the intrusion, and had the deceased ejected out of the room. When the deceased insisted, Waweru took

out a plunk of timber 2"x2" and hit the deceased on the head, and threw him out near some trench, and went to sleep.

5. The deceased did not go away. They found him in the morning lying outside, in bad shape but not dead. PW2 had known both Waweru and the deceased from youth, and that Waweru was older than the deceased. He had known the accused for 2 years. The deceased whose work was to load vegetables, used to be his daily customer.

6. On cross-examination, PW2 reiterated his testimony that he knew both the accused and the deceased from youth and that Waweru who was uncle to the deceased was senior in age to the deceased but was stronger than his uncle Waweru who disappeared after the incident.

7. PW3, knew the deceased but had only known the accused for less than half a day, about 1¹/₂ hours. He was a brother of Waweru who had since disappeared and does not know where he went to, but knew both Waweru and the deceased were brothers, and did not know who between the deceased and Waweru were friends of the accused.

8. He found the deceased on 20.03.2010 lying in front of the quarters where the accused lived. He had blood oozing from the right ear, called him but when he did not respond reported the matter to the Police together with the deceased's father and took him to Provincial General Hospital – Nakuru where the deceased later died from his injuries.

9. PW4 had known the accused for about two and half years as a person he used to see at Kahatia Trading Centre. On the material morning he received a telephone call from his mother that the deceased was lying in a coma outside a plot within the Trading Centre. He in turn telephoned the deceased's father, and then proceeded to the scene and the house of the accused, an off-cut timber structure with shelves for selling beer. He found the house strewn with broken bits of wood, indicating that there was some serious commotion. The mesh wire window was pushed in and broken. He found one broken piece of timber about 2 ft, in length and rough with two long nails.

10. Upon inquiring as to what had happened, the accused informed him that Waweru had beaten the deceased with the piece of timber. He took the piece of timber, but the accused refused to accompany him to the Kerengero Police Station, so he reported the matter there, and the officers from that station arrested the accused.

11. On cross-examination, PW4 denied that the accused was being sacrificed as both the deceased, and Waweru are relatives.

12. PW5, was mother of the accused. She hired a motor vehicle from Nakuru to go and get her son from Kahatia Trading Centre where a friend had informed her by telephone that her son was lying with serious injuries. She found him lying on the ground with blood oozing from both ears. He testified that her son, the deceased never usually slept outside his home, as he had his house about three metres from their own and usually had meals with him.

13. PW6, was father to the deceased. He corroborated the evidence of PW5, how they hired a motor vehicle to bring his son, the deceased, to Provincial General Hospital, Nakuru and that he died from his injuries on that 26.03.2010, at about 4.00 p.m., and he attended the post-mortem on 31.03.2010, and took the body of his son home for burial. He denied knowledge of a fight between his son and James Waweru, except what he was informed that his son and the said Waweru fought over a love affair between them and the accused. He was not aware of the whereabouts of the said Waweru whose home was about thirty minutes of "hard walk" from their home.

14. PW7, is a potatoe and other horticultural products broker in Subukia. He and the deceased were partners in the business and had worked together for about 4 years. After their day's work on the material day, they ended in Uncle Sam's Pub where they had gone to get change, and after sharing the proceeds of the day, they each took a drink. They had found Waweru, the uncle of the deceased having a

drink with the accused, and that after a few drinks, he got drunk, and went home to sleep till 9.00 a.m. The next day the story of the death of his friend broke out. He too identified the plank of wood 2"x2" rough timber. It was shown to him by the accused herself.

15. PW8 a Police Officer, recovered several items of clothing from the house of the accused, and these included two T-shirts, a piece of timber which was blood stained, two trousers and a sample of blood of the accused. He found the accused's house disturbed and property strewn all over the floor, and a broken coffee table. One of the trousers recovered was said to belong to a suspect known as Waweru who had run away, and had not traced him as he was not the Investigating Officer.

16. PW9, the Government Analyst testified that he analysed the items submitted to the Government Analyst for analysis. The Report on the analysis showed that the blood stains on the wooden frame, and the pair of grey trouser matched those generated from the blood samples of the deceased.

17. When put to her defence, the accused gave what I consider candid and matter of fact evidence. She was keenly aware of the charge of murder preferred against her, and others not before the court. She had been a grocery dealer before the incident giving rise to the charges. She was resting in her house when she was visited by one James Waweru Ngugi, a person with whom she had a love relationship. He invited her out to Uncle Sam's Pub or Bar, a place not far from her residence.

18. The said Joseph Waweru Ngugi entertained her until about 1.00 a.m., and at about 1.30 a.m., the deceased came to Uncle Sam's Pub and sat next to them. Sensing danger as the deceased was making overtures or advances to her, she rose from the table and went and sat at the counter. She had known the deceased for about one year, and used to supply her with vegetables for sale at her kiosk, the deceased was a broker for these horticultural products. He had made advances to her but, since she was in a relationship with James Waweru Ngugi, she did not respond to the deceased's advances. She did not want the deceased to know of her relationship with the said James Waweru Ngugi.

19. Like herself, Waweru too did not want either his friends or the deceased to know of their relationship so she discreetly asked Waweru to give her the keys to her house as it was already 2.00 a.m. according to her watch. While Waweru gave her the keys he proceeded to leave while the accused completed her drink and followed him a little later, and found him outside the bar, and no doubt waiting for her. They repaired to her house where they went into slumber until she was awakened by the deceased's calling her by name. As she did not respond the deceased resorted to waking her up by throwing a stone against the small 3"x3" mesh wire window and forced himself into her house.

20. As her companion Waweru was in deep sleep, she woke him up, and that is when the deceased realised Waweru was in the house, he became violent and asked Waweru, why he spent the money he (the deceased gave him), to sleep with prostitutes. So Waweru and the deceased started fighting.

21. In the course of the fighting they broke a small table in her room, and went out of the room fighting. Waweru hit the deceased with the table leg causing the deceased to drop down the stone he had, and fell down. At that stage Waweru beat the deceased severely all over the body, with the broken leg of the table, and she went back into the house. She was followed by Waweru later who informed her that the deceased had gone home, and since it was about the hour when roosters crow, they went back to sleep till morning.

22. The accused was categorical, she was not involved in the fight at all. She did not touch the deceased, that the deceased was a person who would not listen to any advice even if she had told him to go away from her house. As the three of them were all drunk, she could not help any of them. The deceased she said was not after her, but rather was asking for his money from the uncle, Waweru. She had no differences with the deceased, a demanding person. He wanted her but she did not warn him of her relationship with his uncle, Waweru.

23. She discovered the deceased lying outside a potatoe shed in early morning about 6.00 a.m. when she went out to answer a call of nature. He had blood oozing from his nose and ears. Upon informing Waweru of the condition of the deceased, "*Waweru woke up quickly*", as she run to tell PW2 of what had transpired and also showed him the broken table leg.

24. The accused further testified that when PW3 a brother of the deceased came, he feared that the deceased would die in the area, and he called his father (PW4) who came in a vehicle and took the deceased away to hospital. She herself went away and left Waweru at the house, who later disappeared, she had lost his contact, though she last heard that Waweru was in Eldoret. She denied killing the deceased. She was not involved and prayed that she be found not guilty and be acquitted of the offence of murder.

25. The accused reiterated her evidence upon cross-examination. She did not scream to call attention because screaming under the local custom meant that you are a mere drunk if you scream, and you would be the first person to be beaten. She did not report because the deceased had relatives present, uncles including Waweru who could have made a report to the Police. She testified that though drunk, she had not lost her consciousness. She did not touch the deceased in anger. Though she could not remember what the deceased was wearing, she testified that the deceased used to dress poorly.

26. In re-examination by Mr. Kipkoech learned counsel for the accused, the accused emphasised that the deceased was breathing hard, but was alive when she first discovered him lying in the potatoe shed. She did not take any action to assist him or report because the deceased's uncles, Kibue and Waweru were present. She remembered the deceased wearing a jacket and denied knowledge of the other clothes produced as exhibits.

ANALYSIS OF EVIDENCE

27. Though the prosecution called ten witnesses, none of them gave any evidence touching the accused in these proceedings. PW2-PW7 described how they received information about the deceased being found either dead or near dead outside a Bar in Kahatia Trading Centre, and how the father eventually came for, and took him to Hospital in Nakuru. PW9, the Government Analyst, confirmed that the blood on the plunk of wood, matched those of the deceased. None of the witnesses attributed any act or omission to or on the part of the accused. I put the accused to her defence essentially to establish what role (*if any*) she played in causing the injuries to which the deceased eventually succumbed.

28. In her evidence, which I have already described as candid and matter of fact way, the accused testified as to the time the deceased found her and Waweru at *Uncle Sam's Pub*, how she avoided entangling herself between the uncle (*Waweru*), and the nephew (*the deceased*), how the deceased eventually found his way to her house, entered her house by the window (*after smashing it with a stone*) how the deceased and Waweru fought, and how Waweru eventually overcame the deceased and left him outside perhaps for dead, how the accused discovered the accused lying near dead in a potatoe shed, how she alerted Waweru, and how she herself sneaked away from the scene, and the disappearance of Waweru from the scene up to the time of the trial of this case.

29. Considering the entire prosecution evidence, there is not an iota or scientila thereof that can be described as malice aforethought as envisaged under Section 203, and described under Section 206 of the Penal Code, there is no evidence that the accused intended to kill the deceased or to cause him grievous bodily harm. The accused described the deceased as a foolhardy person, demanding and incapable of listening to wise or different counsel. In the drunken stupor, he may have over-reached himself and incensed Waweru (*his uncle*) by following him to the uncle's girl friend's house. When two bulls fight, it is not only the grass that is strampled upon, but the bull with the lesser fighting skills is likely to be gored fatally.

30. In this case, every indication showed that the greater bull was Waweru. No effort was made to trace and bring him to book. In that regard, the Investigating authorities, and their advisors did a very shoddy job of investigation. Their prize was Waweru, not the accused, whose evidence clearly showed

that, the culprit was Waweru. Why he was not found will remain a mystery written in the hearts and minds of those who investigated, and advised to prosecute this case.

31. I find no evidence upon which to convict the accused. I find her not guilty of the offence of murder contrary to Section 203 of the Penal Code and I acquit her accordingly. I direct that she be released forthwith unless otherwise lawfully held.

32. It is so ordered.

Dated, signed and delivered at Nakuru this 13th day of June, 2014

M. J. ANYARA EMUKULE

JUDGE