



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL CASE NO. 4 OF 2010

REPUBLICPROSECUTOR

VERSUS

VERONICA WANJUE NJUE ACCUSED

J U D G M E N T

1. **VERONICA WANJUE NJERU** hereinafter referred to as the accused stands charged with the offence of murder contrary to section 203 as read with section 204 Penal Code. The particulars being that between 3rd and 4th January 2010 at Kanyuambora Location in Mbeere District within Eastern Province the accused murdered one **PETERSON NJERU MUNYI**.

2. The accused pleaded not guilty and the case proceeded to full hearing with the prosecution calling twenty four (24) witnesses.

3. From the evidence of the brothers and cousins of the deceased (PW1, PW2, PW7 and PW9) they had noticed the conspicuous absence of the deceased from around 4th and 5th January 2010. Secondly the accused herself had told some of them that the deceased had gone to buy medicine and had not returned. She had told others that he went to Mukwanjogu to look for a job.

4. Besides the above the deceased and accused who were husband and wife respectively had quarreled and fought on 2nd January 2010. PW2 and PW9 who are his brothers had reconciled them in the presence of others.

5. PW13 – Edward Ephantus Nderi the chief of Kanyuambora had received a report from PW2 and others who came to his office and reported the disappearance of the deceased. The next day the accused went there to report the nagging of the deceased’s brothers about his whereabouts. She told PW13 that on 4th January 2010 the deceased had taken all his tools and gone away to look for work. And that he had that habit before and so she was not surprised.

6. It was the evidence of PW11 - Benjamin Ngare Njeru (their son) that their parents had quarreled on 1st January 2010 because the deceased had come home drunk. And on 3rd January 2010 they ate supper and the accused locked them inside the house and left. After an hour she returned. The deceased was lying on a chair. The accused asked him for a hammer and when he said he did not know where it was she left. She came back and asked for a shovel and he told her it was at a neighbours. She again left for the neighbours.

7. The house where PW11 and others were locked up was next to the main house where these things were happening. The witness then heard something being hit and he saw the mother (accused) and another wrapping the deceased with a blanket and carried him out. Thereafter he saw the accused go where the sheep were, untied one and removed the rope.

8. The accused warned him against saying what he had seen lest she kills him. He went and slept. The next morning he inquired from the accused where the rope for the sheep was. She again repeated that if he ever said what he had seen she would kill him. She sent him to buy another rope. When people would ask him where his father was he would tell them that he had gone to work at Mukwanjogu as the accused had told him to say.

9. PW12 a sister to PW11 recalled that on 3rd January 2010 which was a Sunday the deceased had come for her where the accused was at the river. He asked for food which she served him with and he went to sleep. That evening they slept five (5) of them in the house and that was where they were. The accused came later when the deceased was already asleep. The next day the accused was present when she prepared to go to school. She did not see the deceased. The accused told her the deceased had gone to buy medicine.

10. PW6 – Fedes Wanjue Njeru is a neighbour to the accused. She testified that on 3rd January 2010 at 9pm the accused went to her house asking for the spade/shovel PW6 had borrowed. It was given to her. It was later recovered in a thicket 20m from the site of recovery of the body. It was produced as EXB7.

11. On 6th January 2010 PW1 went to the deceased's house to inquire on his whereabouts. He only found the children. The accused and deceased were not there. PW11 told him the accused had on 4th January gone to Embu to visit her daughters. They went to the shamba and at the river they saw a dug hole but it did not mean much. They left.

12. On 10th January 2010, PW5 and others went to the river and saw a place where there was soft earth with pigeon peas and freshly planted Sukuma wiki. They became suspicious and embarked on digging when they hit something. The next day Police Officers came armed with a Court Order ready for exhumation. The deceased's body was recovered and identified by his family members. He was in the same red striped shirt which they had last seen him in, minus his shoes.

13. PW21 – Catherine Serah Murambi, the Government analyst analysed the soil found on the spade/shovel (EXB7) and the soil from the “grave”. She found them to have the same chemical composition. It contained silicon dioxide. PW14 – Dr. Joseph Thuo examined the accused and found her to be mentally fit to stand trial. PW15 – Dr. Macharia Harum Mbuthia found the cause of death to have been asphyxia secondary to strangulation. The blood vessels around the neck had been blocked especially on the right side. There were also marks on the neck.

14. PW22 – CI Mohammed Amin, PW23 –CI Adan Abdile and PW24 Sergeant William Ruto witnessed the exhumation of the deceased's body. They said it was wrapped in a blanket and a rope around the neck. PW18 – P.C. Jackson Kiprop of Scenes of Crime took photographs of the scene and the body. The photographs EXB5 (M&O) shows the way the body was when it was retrieved. It had a blanket and a rope around the neck.

15. The accused in her sworn defence denied the charge. She said she was with the deceased lastly on 4th January 2010. He went to buy medicine for their child Newton Gitonga Njeru who was unwell and had not gone to school. The rest went to school. After bringing the medicine the deceased proceeded to his place of work at Mukwanjogu school. He never communicated again. The deceased's brothers were bothering her about his whereabouts especially PW2 with whom he used to quarrel because of iron sheets. Her inlaws were threatening her. On 10th January 2010 morning she was arrested by some of the witnesses herein. She was taken to Siakago Police station. She denied that she had any marital problems with the deceased. She denied having been with PW6 that night. She denied knowing the cause of the deceased's death.

16. M/s Njeru for the accused submitted that the evidence of PW11 on which the prosecution relied on was not sufficient. And that it was not established that the deceased was killed and buried on the night of 3rd and 4th January 2010. Finally proper investigation had not been carried out.

17. M/s Ingahizu for the prosecution submitted that the State had proved its case against the accused and that PW11's evidence was well corroborated by the evidence of PW12. Further, the evidence of PW2 – PW4 and PW24 confirmed the accused's guilt.

18. It is shown by the evidence adduced that no one witnessed how the deceased met his death. The evidence available is circumstantial. What then is circumstantial evidence.? In the case of **MOHAMED & 3 OTHERS –V- REPUBLIC [2005]1 KLR 722** – Osiemo Judge explained what circumstantial evidence is as follows;

“Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved”.

19. A Court relying on circumstantial evidence must be satisfied that;

- ***“The incriminating acts are incompatible with the innocence of the accused OR the guilt of any other person.***
- ***The incriminating facts are incapable of explanation upon any other reasonable hypothesis than that of his guilt.***
- ***Before drawing the inference of the accused's guilt – from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference”.***

20. In the case of **MWANGI & ANOTHER –V- REPUBLIC [2004]2 KLR 32** the Court of Appeal held thus;

“In a case depending on circumstantial evidence, each link in the chain must be closely and separately examined to determine its strength before the whole chain can be put together and a conclusion drawn that the chain of evidence as proved is incapable of explanation on any other reasonable hypotheses except the hypothesis that the accused is guilty of the charge”

21. For an offence of murder to be proved two ingredients must be established as provided for under section 203 of the Penal Code. These ingredients are;

- i. Malice aforethought/intention – which is referred to as ***“Mens rea”***
- ii. The act of killing which is referred to as ***“actus reus”***.

22. The fact of death has been confirmed by the evidence of the various witnesses, who exhumed the body. The doctor who performed the post mortem (PW15) confirmed that the cause of death was asphyxia secondary to strangulation.

The deceased could not have strangled himself as his body was found to have been secretly buried at the end of his shamba near the river.

23. In spite of her evidence in defence that her married life to the deceased was rosy, the evidence of prosecution witnesses PW3 (assistant chief), PW8 (brother of deceased), PW9 (retired chief who had handled their disputes), PW11 (their son) reveals otherwise.

24. There is evidence that the accused and deceased fought on 1st January 2010. The accused approached PW8 to reconcile them. PW11 also stated that on 2nd January 2010 the deceased and accused had quarreled because the former had come home drunk. It was PW2's evidence that he had spent the day

with the deceased at Gitii on 3rd January 2010 (Sunday) and he went home at night.

25. PW12 (their daughter) testified that the deceased had on this Sunday (3rd January 2010) come for her at the river where she was with her mother (the accused). He asked for food which she gave him. Their mother returned later when the deceased was already asleep. In his evidence, PW8 who had reconciled the accused and deceased on 2nd January 2010 had this to say at page 17 lines 1-4 of the typed record;

“Her husband also came. We discussed the matter with them and our mother. He wanted us to allow him to be cooking his food as the wife was denying him food. We said ‘no’. The wife said she was refusing to give him food because he was not buying food. We talked to them and they reconciled”.

26. All this evidence goes a long way to show that all was not well between the accused and deceased even as they lived together.

27. What then happened on this evening (night of 3rd January 2010) when the deceased returned home drunk? He slept after eating. Both PW11 and PW12 have testified that when their mother came the deceased was already asleep. According to PW11 the accused locked them in the house where they slept. She returned and asked for a hammer and he told her he did not know. She again left locking them in the house. She again returned and asked about a spade/shovel. PW11 told her it was at their neighbour's. She left for the neighbour's and still locked them in the house. From the evidence, this house where PW11, PW12 were is next to the main house.

28. This neighbour from whom the accused went to get a spade/shovel testified as PW6 – Fedes Wanjue Njeru. She stated that she was at home with her two children on 3rd January 2010 at 9pm when the accused came and asked for the shovel she had borrowed from her. The shovel was for removing ashes from the earth. Their homes are neighbouring. According to the Investigating Officer – Sergeant William Ruto (PW24), this spade/shovel EXB7 was recovered in a thicket 20m from the grave from which the deceased's body was recovered.

29. PW24 took soil samples from the spade and the grave and sent them to the Government Chemist for analysis. The report by PW21 the Government Analyst was that the soil on the spade/shovel (EXB 7) and from the grave had the same chemical composition. My conclusion is that this spade/shovel had been used in scooping soil to fill the grave.

30. The person who had asked for this shovel on 3rd January 2010 night from PW11 was the accused. It is also the accused who personally went to PW6 to get back the shovel which she had lent to PW6. The said shovel was given to the accused on that night. In her defence in cross-examination, she denied having gone to PW6's home. I see no reason for PW6 and PW11 to lie against the accused. She should have explained what she did or where she went with the shovel (EXB7) after picking it from PW6's home.

31. PW11 was very keen to see what his mother (accused) with another were upto. He could not come out of the house as the accused had locked it from outside. There was moonlight and there was light in the house where the deceased was. He saw them wrap the deceased in a blanket and carried him out. On further peeping, he saw the accused go to the sheep's pen and get a rope from one of the sheep. He then went and slept. In cross-examination at page 24 lines 15-17 of the typed proceedings he said;

“My mother had told me not to tell anybody anything. She had told me that my father had disturbed her for a long time and she would kill him and if I told anybody she would kill me”.

32. The next morning PW11 willingly asked his mother where the rope had gone to. The accused responded warning him of death if he ever said what he had seen. She sent him to buy another rope which he did.

33. PW12 confirmed to the Court that she last saw the deceased on 3rd January 2010 night after giving him food. The next morning her father (deceased) was not there and her mother (accused) told her he had gone to buy medicine. In her defence the accused said on 4th January 2010 morning she prepared all the children for school and made them tea. She even woke up the deceased to have tea. The children save for Newton Gitonga went to school. In cross-examination the accused said even PW11 went to school. PW11 himself told the Court he does not go to school which means he did not go to school on 4th January 2010.

34. These two children (PW11 and PW12) confirmed to the court that they never saw their father (deceased) that morning of 4th January 2010. These are young children who would have no reason to lie against their mother. M/s Njeru in her submissions states that PW11's evidence was not corroborated and so could not be relied on. This kind of submission is not supported by any provision of the law.

35. PW11 did not at any time say the deceased was hit by a hammer on the head. All he said was that he had seen the accused's co-accused (who was acquitted) with a hammer and that he had later heard the sound of something being hit.

36. It is true as the defence Counsel submitted that the rope and blanket which were seen by the doctor (PW15) were not produced as exhibits. Besides that, all the witnesses who witnessed the body being exhumed said they saw the blanket and the rope which were used to tie the deceased around the neck. Furthermore the photographs (EXB15 M&O) which were produced herein as exhibits show that the blanket and rope were tied around the deceased. The investigating officer may not have produced them but there is no doubt that they were found on the deceased's body.

37. PW11 had seen the accused untie one of the sheep and remove a rope. Going by what was happening on this material night, I am convinced beyond doubt that PW11 saw the father wrapped in a blanket and being carried out.

38. M/s Njeru submitted that there is doubt as to whether the deceased was killed and buried on the night of 3rd and 4th January 2010 because of the dug empty hole seen by PW1 on 6th January 2010 and the finding of the grave on 10th January 2010.

39. I differ with her on this submission because there is no evidence that the deceased was buried on the night of 3rd and 4th January 2010. Infact the evidence of PW1 confirms this. There is no evidence that anyone visited that site between 6th – 9th January 2010 to confirm that nothing was there.

40. All that the witnesses said is that on 10th January they found fresh soil at the site with cowpeas and sukama wiki planted on it and they were gminating. The accused is also not accused of burying but rather killing the deceased. It is therefore clear that the deceased was killed and buried later at the spot where the body was recovered from.

41. The accused only went to report to the chief (PW13) after the pressure from the deceased's relatives became too much for her to bear. Infact she was not reporting the disappearance of the deceased but rather the pressure from the inlaws over the missing person. She had told PW1 – Peter Muriithi Ngondi that the deceased had gone to buy medicine and never returned.

42. She however told others that he had gone to look for work at Mukwanjogu. That is what she even told PW11 to tell anyone who asked about the deceased. The brothers of the deceased reported the disappearance of the deceased but his beloved wife who says they had no marital issues never reported it until she was pushed to the wall by the inlaws. I find this to be strange.

43. M/s Njeru also submitted that the accused was arrested long before the body was exhumed and identified. And that the reason for her arrest was insufficient. The fresh grave was discovered on 10th January 2010 around 3.30pm and a bit of digging was done and as they progressed a red stripped shirt

was spotted. PW1 – PW4 identified the shirt as belonging to the deceased. Infact it is PW1 who had bought it for him.

44. Other officers also came to the site. The rest left while two (2) Aps and the deceased's brothers were left guarding the site. The officers passed through the deceased's home and arrested the accused and two (2) children to assist in investigations. The main reason was that no report of murder had been made. All that had been reported was a missing person. The police needed to question the close family members about the disappearance. The children were released and the accused remained in custody. Therefore there was nothing sinister about the arrest before the body was identified. The shirt he wore had already been identified.

45. Given that the evidence this court is dealing with is circumstantial evidence, would it be said to be lesser evidence? In the case of **REPUBLIC –V- TAYLOR WEAVER & DANOVAN [1928]21 CRIMINAL REVISION 20** it was said;

“Circumstantial evidence is very often the best evidence of surrounding circumstances which by intensified exam is capable of proving proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial”.

46. When I put all this evidence together I do find that a complete chain has been formed, pointing to none other than the accused as the person who masterminded and participated in the killing of the deceased person. The killing was premeditated. She had told her son (PW11) that the deceased had given her a lot of trouble and she would kill him. And she kept on threatening PW11 with death if he ever revealed what he had seen. What was she fearing that he had seen? What he had seen is what he told the court.

47. I find the prosecution case proved beyond reasonable part. For my part I find the accused guilty of the offence of murder contrary to section 203 as read with section 204 Penal Code. I convict her accordingly.

DATED, SIGNED AND DELIVERED AT EMBU IN OPEN COURT THIS 9TH DAY OF SEPTEMBER 2014.

H.I. ONG'UDI

J U D G E

In the presence of;

M/s Ing'ahizu for State

M/s Njeru for Accused

Accused

Mutero/Kirong – C/c