



1. Criminal Law
2. Murder – Ruling

- i. Is there a case to answer to the charge?
- ii. Statement of offence

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

- iii. **Particulars of offence**

On 14th July, 2007 at unknown time in Kericho District within Rift Valley Province jointly murdered Humphrey Njenga Mbugua

3. Prosecution case

- i. Deceased and accused No. 1 husband and wife.
- ii. Marital problems .
- iii. Husband Humphrey Njenga Mbugua (*now deceased*) disappears.
- iv. Was last seen having visited the accused No. 1.
- v. Accused no. 1 left matrimonial home with two children and befriended accused No. 2.
- vii. Accused 1 and deceased attempt to be reconciled by PW3 – a pastor and neighbour – not successful in a past visit.
- viii. Pending evidence PW10 P.C. Rose objected to, as her statement recorded later.
- ix. Relatives received information of recovered body.
- x. Police found body in water, asked PW4 to retrieve the same by police.
- xi. Mother to deceased PW8 and neighbour identify body.
- x. Prosecution close case.

4. After close of prosecution case

- i. No case to answer by accused No. 1 and 2 on grounds only that body recovered may not have been deceased.
- ii. Prosecution case proved beyond reasonable doubt.

5. Held

No case to answer to offence.
Not sufficient proof of identification of body of deceased to prove it belongs to deceased.

6. Case Law - Nil

7. Advocate

P. Kiprop State Counsel instructed by the Attorney General for the state – present
J.J. Onyango advocate instructed by the firm of M/S Jamsubah Onyango & Co. advocates for the 1st accused – present
T.M.O. Nyaingiri advocate instructed by the firm of M/S Nyaingiri & Co. advocates for the 2nd accused – present

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE 24 OF 2007

REPUBLIC PROSECUTOR
VERSUS
RUTH MUTHONI GACHANJA1ST ACCUSED
PILATE SHINYINKHA BUKHULA 2ND ACCUSED

RULING

I: Statement of offence

1. Ruth Muthoni Gachanja and Pilate Shinyinkha Bukhula were both charged with the offence of *murder contrary to section 203 as read with*

section 204 of the Penal code in the High Court of Kenya at Kericho.

2. The particulars of offence as contained in the information is that *on the 14th July, 2007 at unknown time in Kericho district within the Rift Valley Province jointly murdered Humphrey Njenga Mbugua.*
3. The prosecution called a total of eleven witnesses and closed its case.
4. Should the two accused be placed on their defence?

II: Submissions by advocate for accused 1 and 2 and the state.

5. Each respective advocate for the accused argued that there is no case made out against the two accused to warrant them to be placed on their defence.
6. The state argued there is sufficient evidence requiring the two accused to be placed on their defence.

III: Facts of the case

7. The prosecutions tried to bring out the facts that the accused No. 1 and the deceased were married and two issues from the said union. The accused No. 1 left their matrimonial home in Eldoret and took two of the children with her and went to live in Kericho. The deceased followed her to Kericho made a report to the police then left.
8. PW3 a pastor and neighbour to accused No. 1 tried to reconcile the two but it was not possible.
9. Another neighbour PW2 – a student spoke of times when she was left with the children to look after only to have the accused No. 1 not return home. This was especially so on the night of 14th July, 2007. It was said that was the day the deceased disappeared.
10. The deceased had return to Kericho to look for the accused No. 1. PW1 who was an agent to a house where the accused No. 1 stays met both accused No.1 and deceased at the supermarket and greeted them. It was therefore this witnesses evidence that the last person who had been with the deceased was accused No. 1.
11. When the deceased did not return home. His brother PW5 and nephew PW8 made a search for the deceased in Kericho through the police and further enquiry with accused No. 1. They received information that a body had been found in the river and recovered.
12. This body was decomposed. It had a cut wound to the side of the head, shoulder and injury to C1, and C2 of the spinal code. The medical doctor who did the post mortem confirmed this PW11.
13. The accused No. 1 moved houses. The police looked for her and arrested her together with accused No.2 her alleged boy friend.
14. The motive of the murder was that accused No.1 wished to be with accused No. 2.
15. The evidence before this court is circumstantial in nature. It is therefore the prosecution case that the deceased was murdered by accused No. 1 and 2.
16. The problem arises as to whether the deceased was actually one Humphrey Njenga Mbugua. His mother PW7 identified him by features on his toes and fingers. His nephew PW9 also identified him as the one.
17. The government analyst attempted to do a DNA sample analysis. He, PW6, was unable to obtain any profile that could show the body had the same DNA with that of PW7. One of the challenges was that the body was decomposed. Another challenge was the DNA machine broke down

thereafter and could not be repaired but the third challenge was that PW7, the mother to the deceased refused to have the deceased's jaws removed for analysis. She took the body to burry it. The defence abandoned their request to exhume the body for further analysis.

18. There is therefore no connection between the deceased and PW7 as being the one and same persons from the same family.
19. I would find it unsafe to place the accused 1 and 2 on their defence. They are both not required to answer to the offence. I therefore record a finding of not guilty under **Section 306(1)** of the Criminal Procedure Code. They are at liberty unless otherwise lawfully held.

DATED this 8th day of October, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

P. Kiprop State Counsel instructed by the Attorney General for the state – present

J.J. Onyango advocate instructed by the firm of M/S Jamsumbah Onyango & Co. advocates for the
1st accused – present

T.M.O. Nyaingiri advocate instructed by the firm of M/S Nyaingiri & Co. advocates for the 2nd accused – present