



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: TUNOI, O'KUBASU, J.J.A & DEVERELL, J.J.A)
Criminal Appeal 8 of 2000
BETWEEN

PATRICIO NJIRU KIRANGI 1ST APPELLANT

JONATHAN NJERU MANUNGA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

**(An Appeal from a judgment and sentence of the High Court of
Kenya at Embu (Juma, J.) dated 1st November, 1999**

in

H.C.CR. C. No. 5 of 1997)

JUDGMENT OF THE COURT

PATRICIO NJIRU KIRANGI and *JONATHAN NJERU MANUNGA*, the 1st appellant and the 2nd appellant respectively, were convicted of murder by Juma, J. on 1st November, 1999. According to the information filed by the Attorney General at the High Court of Kenya at Embu, the appellants on **13th September, 1996** at Ndayu village in Riandu Sub-location within Mbeere District of Eastern Province, jointly with another not before Court murdered Angelica Mbuya Kivuria, the deceased.

The deceased was married to Kivuria Manunga (PW1), a cook at Siakago Secondary School. On the material day at about 1.00 p.m. she went to the local market to buy some foodstuff. As her basket (Kiondo) was full she asked her neighbour Deborah Wakere (PW6) to assist her carry some potatoes and sukuma wiki home. PW6 left the market at about **5.00 p.m.** leaving behind the deceased. As to where the deceased went after parting company with PW6 is not known except that she did not return home on that day and her body was discovered in a pit latrine on **19th September, 1996**. The head, the legs and the hands had been chopped off with a sharp object.

The pit latrine was at the home of the 1st appellant and it is the prosecution's case that the 1st appellant led and directed a police team of Sgt. Wahome (PW10) and C.I. Muremi (PW8), amongst others, to the place wherein the body was recovered. The 1st appellant also handed over to the police two pangas which he was alleged to have used to kill the deceased. On **25th September, 1996**, the 1st appellant made a Charge and Caution statement before I.P. Ndungu (PW9) in which he admitted having killed the deceased. However, he retracted it during his trial.

On 7th October, 1996, a Statement Under Inquiry, was taken from the 2nd appellant by PW9. In it

he stated:-

“On 11th September, 1996 I and Patricio Njiru planned and conspired to kill Kivuria Manunga. On 13th September, 1996 I went to check for Kivuria Manunga from his house but I did not find him. His home is at Riandu. After missing him, I walked towards Siakago town. It was about 7.30 p.m. As I was walking towards Siakago I met with Paulo Nyaga and Patricio Njiru on the way. I told them I had not traced Kivuria in his home but I informed them I had met with his wife along the way. We discussed what to do and then I told them we should kill his wife. We agreed to do it and therefore followed her.

When we caught her, Njiru took away the basket she was carrying. Paulo held her hand and took her, in the bush. Myself and Njiru followed. While in the bush I held her on the neck but she managed to free herself and said, ‘I know you all and then screamed four times.’ Njiru using a panga which was in his possession slashed the deceased Chiakanyi Kivuria four times on the head and shoulders. Myself and Paulo left when the deceased fell on the ground. We left Njiru at the scene . I went to my home.”

On the following day, the 2nd appellant made a Charge and Caution statement. He stated:-

“It is true we killed that woman called Angelica Mbuya Kivuria. I was with Patrick Njiru Kirangi and Paul Nyaga Mbaka.”

During the trial, the then counsel for the 2nd appellant informed the court that he had no objection to the production of the two statements. Thus, the two statements were admitted without them being retracted or repudiated. The learned Judge convicted the 1st appellant on the basis that he led the police to the scene of the murder, the pit latrine within his home wherein the body of the deceased, her ciondo and clothes were recovered. As for the 2nd appellant, the learned Judge convicted him on the strength of his confession. The basis of all this is that the appellants must have killed the deceased and dumped her body in the pit latrine.

Mr. Kahigah for the two appellants submitted before us that the trial Judge erred in convicting the appellants on the basis of a purported confession which was inadmissible in law and that there was insufficient evidence, direct or circumstantial to found a conviction.

We will first dispose of the appeal by the 2nd appellant. The Statement Under Inquiry and the Caution and Charge statement made by him are a clear admission of his guilt. The 2nd appellant goes into detail and describes the circumstances in which he took active part in killing the deceased and why he and the 1st appellant did so. With respect to Mr. Kahigah, we see no reason or justification for discounting the value of the confession so made by the 2nd appellant. The trial Court, in our view, could convict upon such confession. Since taking all the circumstances of the case into consideration, there seems to be no reason to believe that the confession is not true. We uphold the conviction of the 2nd appellant.

There is sufficient evidence on record to show that the 1st appellant led the police to the pit latrine at his home. Also, he made a Charge and Caution Statement which though he retracted, the trial Judge accepted it after a trial within a trial on the ground that the statement had been made freely and voluntarily and that it contained nothing but the truth. We think that, in the circumstances, the trial court was perfectly entitled to convict the 1st appellant on his confession since it is manifestly clear that it followed the guidelines set out in Tuwamoi vs. Uganda [1967] E.A. 84 at page 91 which reads: -

“A trial court should accept any confession which has been retracted or repudiated or both retracted and repudiated with caution, and must before founding a conviction on such a confession be fully satisfied in all the circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the court. But corroboration is not necessary in law and the court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the

confession cannot but be true.”

The evidence relating to the discovery of the body, which is independently adduced corroborates materially the confession obtained from the 1st appellant.

Mr. Kahigah also contended that the 1st appellant should not have been convicted in the absence of a motive to kill the deceased. It is on record that there exists a land dispute between him and the husband of the deceased. We agree with the learned Judge that whether this was the cause of the bad relations between them or not is immaterial since the prosecution need not prove motive in order to sustain a conviction in a murder case.

After a full consideration of the evidence on record we are satisfied that the two appellants were properly convicted and we dismiss their respective appeals.

ORDER: Appeal dismissed

Dated and delivered at Nyeri this 20th day of May 2005.

P.K. TUNOI

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JUDGE OF APPEAL

E. O. O’KUBASU

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JUDGE OF APPEAL

W.S. DEVERELL

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.