**Kimani v Republic**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 8 August 2000

**Case Number:** 36/94

**Before:** Omolo, Tunoi and Lakha JJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Crime – General defences – Insanity – Whether accused was insane at the time she killed her*

*daughter.*

*[2] Evidence – Expert evidence – Value to be given to such evidence.*

**Editor’s Summary**

Kimani conceived the victim, N, out of wedlock. In 1991 N was about twelve years old. She went to visit her mother in Nairobi on 14 April. On 15 April the day of her death, N was seen going out with Kimani. Circumstantial evidence adduced before the Court linked Kimani with the killing of N. During the trial, a consultant psychiatrist gave evidence that Kimani was suffering from an “affective illness” at the time, and that in that state she would not know that what she was doing was wrong. The trial Judge concurred with two assessors in finding Kimani guilty of murder and sentencing her to death. On appeal, it was contended that Kimani was insane at the moment of the killing.

**Held** – There is something strange in a mother killing her child in the manner narrated. However, there cannot be a presumption of insanity. Though the courts must give proper respect to the opinions of experts, such opinions are not binding on the courts. Such evidence must be considered along with all other available evidence, and the court would be entitled to reject it if the expert opinion is not soundly based. *Dhalay v R* criminal appeal number 10 of 1997, *Ndolo v Ndolo* CA 128/95 followed.

K’s conviction for murder set aside and substituted with a finding of killing while insane.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Dhalay v Republic* [1997] LLR 514 (CAK) – **F**

*Ndolo v Ndolo* [1995] LLR 390 (CAK) – **F**