**Mbugua v Republic**

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

**Date of judgment:** 13 October 2000

**Case Number:** 35/91

**Before:** Omolo, Shah and Bosire JJA

**Sourced by:** LawAfrica

**Summarised by:** H K Mutai

*[1] Criminal law – Murder – Malice aforethought – Grievous bodily harm inflicted on deceased –*

*Identification – Whether Appellant had been sufficiently identified – Whether Appellant possessed the*

*requisite malice aforethought – Section 11 – Penal Code (Chapter 63).*

*[2] Judgment – Contents – Verdict – Trial Judge differing with assessors – Whether Judge must list his*

*reasons for arriving at a different conclusion.*

**Editor’s Summary**

On the evening of 20 November 1987, Simon Ngugi Njuguna was attacked and seriously injured as he walked along a path. Shortly thereafter, he was found and rushed to hospital. That same evening, three other people in the neighbourhood were attacked with a panga and injured, though not seriously. Simon Ngugi Njuguna succumbed to his injuries the following day. The Appellant was arrested and charged with the murder of the deceased contrary to section 203 as read with section 204 of the Penal Code, Chapter 63, and Laws of Kenya. At his trial, Peter Mbiyu Githuka, who was among those who found the deceased, testified that at the time he was found, Simon Ngugi Njuguna was still able to speak and stated that it was “Brown” (a nickname by which the Appellant was known) who had attacked him. The three other people attacked that evening all also testified that it was the Appellant who had attacked them. At the end of the trial, two of the assessors found the Appellant guilty of manslaughter while the third found him to be innocent. The trial Judge differed with the assessors and found the Appellant guilty of murder as charged and sentenced him to death. The Appellant appealed, *inter alia*, on the grounds that the evidence adduced at the trial was suggestive of the crime of manslaughter rather than murder and that the trial Judge had failed to give reasons for differing with the assessors.

**Held** – The evidence adduced made it unreasonable to think that it was anybody other than the Appellant who attacked the three witnesses as well as the deceased. There was sufficient medical evidence placed before the court to prove that the Appellant was of sound mind at the time of the attacks. Moreover the Appellant had never raised any issue relating to his insanity either before, during or even after his trial. With regard to the related issues of provocation and insane delusion, there was no evidence to support the Appellant’s proposition that he was labouring under the belief that the deceased was having an affair with his wife at the time he killed him; *Rex v Kibiegon arap Bargutwa* (1939) 6 EACA 142 distinguished. While the law required a judge to give reasons where he differed with the assessors, this was not a statutory requirement and he was not required to list the reasons that led him to differ with them. It was sufficient that one was able to understand the reasons given by a judge for his conclusion from his judgment; *Kinuthia v Republic* [1987] LLR 273 (CAK) considered. Accordingly, the appeal would be dismissed.

**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)

*Kinuthia v Republic* [1987] LLR 273 (CAK) *–* **C**

*Rex v Kibiegon Arap Bargutwa* (1939) 6 EACA 142 – **D**