



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 5 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**PATRICK MURUA MWANGI & 8 OTHERS.....ACCUSED**

**RULING**

1. This court was invited by one of the counsel for the accused persons, one Mr. Momanyi who sought to have orders issued by this court to the effect that PW8 be investigated whether she is a blood sister to the deceased herein.
2. The prosecution opposed this application for reasons that in as much as the police are in a position to open another file and have the witness investigated, the same would not add any probative value unto this case since the same would lead to unnecessary delays.
3. The need to have the witness investigated was prompted by the fact that the witness (PW 8), one Jane Muthoni Njiru's written statement was at variance with the oral testimony that she made before the court. Upon being tasked to explain the discrepancy, she said that she did not tell the police to write whatever was in her statement and so she preferred, instead, her oral evidence as opposed to the written statement.
4. I have considered the brief oral submissions by the parties herein. It is trite that this being a criminal matter, it is incumbent upon the prosecution to prove their case beyond any reasonable doubt and they should be given a chance to do so.
5. In the instant case, the accused persons are facing a charge of murder contrary to Section 203 as read with 204 of the Penal Code. Murder is defined as

***“when any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”***

The elements of murder and which the prosecution ought to prove are

- a) the death of the deceased occurred***
- b) the death was caused by unlawful acts;***
- c) that the accused committed the unlawful act which caused the death of the deceased; and***
- d) that the accused had malice aforethought.***

(See **Anthony Ndegwa Ngari vs Republic [2014] eKLR**).

6. In the premises, it would be of no probative value to have the witness investigated since even as the prosecution is carrying out its duties, the defence has the right to test the veracity of the evidence adduced by the prosecution by way of cross-examination. Ordering investigations would only delay the case and will not serve any useful purpose.

7. In any event, if any party wishes to have the investigations undertaken, they can take the initiative and report the same to the police.

8. In the circumstances I find that the application has no merit and hereby dismiss the same.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 26TH DAY OF JANUARY, 2022.**

**L. NJUGUNA**

**JUDGE**

.....**FOR THE ACCUSED**

.....**FOR THE STATE**