



REPUBLIC OF KENYA



**Republic v Maguje (Criminal Case 28 of 2021)
[2022] KEHC 16938 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 28 OF 2021
WM MUSYOKA, J
DECEMBER 23, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

ELISHA EMALI MAGUJE ACCUSED

RULING

1. The accused herein is charged with the murder of Carolyne Ndongole Khamati. Only 2 witnesses testified, on September 8, 2015, before the matter stalled.
2. PW1, a child, Mercy Achieng Ndubi, said:

“Betty came where my mother and Betty were. She at once got hold of my mother and threw her down. It appeared Betty wanted to fight my mother. I was right there when it was happening. Then Elisha got hold of my mother on the shoulders as she sat down. Then Betty took a knife and stabbed my mother. I saw it. It was daytime...My mother died that very afternoon...When she got to where my mother was, she grabbed my mother at once and thereafter stabbed my mother before running away...I did not see Elisha with any weapon. Betty is the one who stabbed my mother...When Betty stabbed my mother, Elisha was holding my mother by the shoulders.”

3. PW2, a child of 16, Teresia Asiko Seme, stated:

“Then Carolyne took Elisha by the hand. Betty came and got hold of Carolyne and they fell down. Then Elisha went to Carolyne and held her by the shoulders from behind. I then saw Betty carrying a knife with blue handle. I tried to wrestle the knife but learnt later Betty had already stabbed Carolyne. I struggled with Betty until the knife fell down.”



4. From the testimonies of the 2 witnesses, nothing points to the accused person, for the act which must have caused death was the stab with the knife by Betty. The accused was only said to have held the deceased by her shoulders. There is no suggestion that he did so to facilitate the stabbing of the deceased by Betty, and there is no evidence that he and Betty acted in concert. I do not quite see why it was the accused charged with the offence, instead of Betty, the person who actually stabbed the deceased.
5. Overall, a *prima facie* case has not been established against the accused person, to warrant his being put on his defence. I shall accordingly find him not guilty and acquit him of the charge, under section 306(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, of the murder, contrary to section 203, as read with section 204 of the *Penal Code*, Cap 63, Laws of Kenya, of Carolyne Ndongole Khamati. He shall be set free, if he still is in remand custody, unless he is otherwise lawfully held.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS
.....23rd DAY OFDecember.... 2022**

WM MUSYOKA

JUDGE

Mr Erick Zalo, Court Assistant.

Mr Chigiti, instructed by the Director of Public Prosecutions, for the Republic.

Mr Munyendo, Advocate for the accused person.

