

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 28 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

WILLIAM KIPKORIR CHIRCHIR.....1ST ACCUSED

GODFREY KING'ETICH KIRUI.....2ND ACCUSED

RULING

Both accused persons were charged with the murder of Janet Wangui Waiyaki, the deceased, on 20th May 2018 at about 10.30 hrs at City Park, Parklands in Westlands Sub-County within Nairobi County. Each denied this charge. After calling a total of 22 witnesses the State through the Office of the Director of Public Prosecutions rested its case ON 16th December 2020. I have considered the evidence of the prosecution. It can be summarised that after a night of merrymaking the deceased and her nephew Bernard Chege Gathima (PW3) parked their vehicle KBX 615H Toyota Fielder at the City Park on the morning of 20th May 2018. The motor vehicle was heavily tinted and someone outside could not see inside the vehicle. This raised suspicion to Eustace Mureithi (PW4) a Nairobi City County guard manning the area.

Evidence shows that this was happening at a time when the country was under threat of terrorism and an alert had gone out to all the security agencies to that effect. There was a special operation in Nairobi County mounted by a mix of Administration and Regular Police Officers drawn from various police stations. One group of such officers, including the two accused persons, was deployed to Westlands Area. PW4 reported the suspicious motor vehicle to this group of police officers on patrol at the area. The group of police officers approached the vehicle and issued orders for the occupants to open the door. Instead of opening the door, the driver, PW3, started driving away. Police opened fire hitting the vehicle and the occupants inside. Evidence shows that the deceased was fatally wounded and was pronounced dead on arrival in hospital. PW3 received gun shot wounds but he survived. After investigations, the two accused persons were arrested and charged with this offence. On 16th December 2020 when the prosecution concluded their case, I placed the two accused persons on their defence and undertook to write a ruling to that effect at a later date.

I have considered the evidence. The witnesses who were on duty with the accused persons confirmed shooting took place. They tended to claim that the shooting was meant to stop the vehicle from fleeing and others tended to claim that they were acting in self defence due to the nature of the operation they were involved in and given the terrorism alert in force and the suspicious manner of the vehicle. It is clear to me that the deceased lost her life from this shooting. It has been testified that the firearms being handled by the two accused persons were involved in this shooting leading to the loss of life of the deceased. The law and criminal procedure demands that the court examines all the evidence to arrive at a conclusion whether the two accused persons or any of them is guilty of causing the death of the deceased. It is my considered opinion that for completeness of the record and for justice to be seen to have been done, it is proper to receive all the evidence from the prosecution and the defence to inform this court of all the circumstances surrounding this death. It is for this reason that I proceed to find that each of the accused persons has a case to answer and place each of them on their defence. These orders are issued further to the orders of 16th December 2020. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JANUARY 2021.

S. N. MUTUKU

JUDGE