



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HCCR NO. 56 OF 2017**

**Formerly Machakos HCCR No. 44 of 2015**

**REPUBLIC.....PROSECUTION**

**-VERSUS-**

**GERALD MUTUKU NYAGITA.....1<sup>ST</sup> ACCUSED**

**JACKLINE MWENDE MUTUA *alias***

**JACKLINE MWENDE KITHOME.....2<sup>ND</sup> ACCUSED**

**RULING**

1. **Gerald Mutuku Nyagita** and **Jackline Mwendu Kithome** referred to as 1<sup>st</sup> and 2<sup>nd</sup> accused persons are jointly charged with the murder of **Darius Kithome Munyaliti** contrary to section 203 as read with section 204 of the Penal Code.

2. The prosecution case is premised on the evidence of fourteen (14) witnesses. Both parties filed written submissions through their learned counsel.

3. From the evidence, it is clear the deceased did not die from a natural cause. The witnesses have explained what they each did, heard and witnessed on the night of 8<sup>th</sup> and 9<sup>th</sup> day of May, 2015.

4. The 2<sup>nd</sup> accused was an estranged wife of the deceased, and the latter was living with the children of the marriage. The 1<sup>st</sup> accused was said to be in a romantic relationship with the 2<sup>nd</sup> accused.

5. There are burnt items belonging to the deceased which are said to have been found in a house said to belong to the 1<sup>st</sup> accused. They were produced by PW12. They were recovered in 1<sup>st</sup> accused's absence and no one identified them as belonging to the deceased. The hired car that was said to have been used by the 1<sup>st</sup> accused to run over the deceased was released to the owners. It does not form part of the evidence before this court. Basically, I find the evidence trying to connect the 1<sup>st</sup> accused to the murder of the deceased to be very weak. For my part, I find him not guilty and acquit him under section 306(1)

6. On the other hand, I am satisfied that the prosecution has made out a prima facie case against the 2<sup>nd</sup> accused. I hereby place her on her defence under section 306(2) Criminal procedure Code.

7. 1<sup>st</sup> accused shall be set free unless otherwise held under a separate warrant.

Orders accordingly.

**Delivered, signed & dated this 28<sup>th</sup> day of January 2020, in open court at Makueni.**

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**H. I. Ong'udi**

**Judge**