

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 51 OF 2019

REPUBLIC PROSECUTOR

VERSUS

BRIGIT GACHERI GIKUNDA.....ACCUSED PERSON

RULING

1. On 24/9/19, **Mr. Muriera**, Learned Counsel for the accused informed the Court that a total sum of Kshs.84,300/= was recovered from both the deceased and the accused, i.e. Kshs.20,000/= from the accused and the balance from the deceased. He applied therefore that the said money be returned to the accused and be paid to her mother who is said to be taking care of the child whom the accused had with the deceased.

2. **Mr. Maina**, the Senior Prosecution Counsel informed the Court that the accused had indicated that she had no claim to the said money and that Gikonyo J. had ordered the same be released to one Japheth Koome a partner of the deceased on 7/8/2019.

3. In pursuance thereof, this Court directed that, since there was no dispute that there was a child by the name **Maxwell Mwiraria** born out of the relationship between the deceased and the accused and that the money had neither been released to the accused nor the caretaker of that child, the D.C.I.O Imenti Central do appear in court on 9/10/2019 together with the persons to whom he released the sum.

4. On that day, **Cpl Sindani Benson**, the investigating officer, appeared in Court in the company of people said to be the mother, wife, 3 brothers and children of the deceased. He confirmed that in the course of the search of the deceased's premises, a sum of Kshs. 84,335/= was recovered from the clothing of the deceased. He told the Court that the deceased was at the time residing with the accused together with a small child. However, that the family of the deceased had informed him that the deceased was married to another woman and not the accused which information he believed to be true.

5. It further told the Court that on 7/8/2019 when he appeared before Gikonyo J, the accused did not object to the money being released to the family members of the deceased who resolved that same be released to **Francis Koome**. In that regard, he had released the money and some motor cycle to the aforesaid Francis Koome.

6. On 14/10/19, **Elizabeth Kaburo** and **Francis Koome Mwilaria** filed affidavits in which they stated that; they were wife and brother of the deceased, respectively. That on 29/7/19, Gikonyo J had ordered that the money be released to the family after the accused had indicated that she had no claim thereto. That the money belonged to the deceased and not the accused and that same had been utilised towards the costs for his burial and other expenses of his estate after it had been released to them. They produced a withdrawal slip showing that the deceased had on 26/6/19, three days before he was killed, withdrawn a total sum of Kshs.180,000/-. They contended that the said sum of Kshs.84,335/- was part of the said amount.

7. I have considered the testimony of **CPL Sindani** and the entire record. The accused was first presented in court on 15/07/19 together with one **George Gikunda Murigu** whereby the court directed that they be examined on fitness to plead. On 29/7/19, the prosecution withdrew the charges against **George Gikunda Murigu** before Gikonyo J.

8. Pursuant thereto, the accused took a fresh plea on 7/8/19 whereby she denied the charge against her. The Court directed that a pre-bail report be prepared and filed. There was no other proceedings recorded on that date. Further, there was no any mention whatsoever regarding the alleged Kshs.84,335/- as alleged by **CPL Sindani**. Further, it is not true that there were any proceedings on that date or any other date before Gikonyo J touching on the said sum of Kshs.84,335/-. The record is clear that Gikonyo J has never made any orders regarding the said money.

9. In this regard, it is a blatant lie by the Investigating Officer that on 7/8/19 any proceedings were undertaken before Gikonyo J. who gave any orders touching on the said sum. The record is clear that on the said 7/8/19, this matter came before this court and the proceedings were about the plea and bond application.

10. The position is that; a total sum of Kshs.84,335/- was recovered from the premises and clothing of the deceased. The deceased was at the time cohabiting or living with the accused in the said premises. The accused's Counsel was categorical that what was recovered from the accused was Kshs.20,000/- and the rest from the deceased. The direct claim by the accused is Kshs.20,000/- and not the entire sum. However, the wife of the deceased has laid claim thereon and has produced evidence that the deceased had withdrawn a sum of Kshs.180,000/- from his account and that the amount in dispute was part thereof.

11. This is not a family Court presiding over matters touching on the estate of the deceased. In view of the claim and counter-claim on the said sum, and for the reason that there is no evidence that Gikonyo J made any order in respect of the said money, I direct that the parties are

best placed lodging a claim and having the matter adjudicated upon before a civil court.

It is so ordered.

DATED and DELIVERED at Meru this 24th day of October, 2019.

A. MABEYA

JUDGE