

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 147 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

VINCENT ONGORI MOCHOGE.....ACCUSED

RULING

The accused, VINCENT ONGORI MOCHOGE, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was alleged that on 8th December 2012 at Bonyariki Village, Bogeka Sub-location, Kisii Central District within Kisii County, he murdered Lilian Kerubo Mogusu.

The prosecution case was that the accused and deceased, who were husband and wife, had constant quarrels over allegations of infidelity on part of the deceased and on the material night, while armed with a panga and kitchen knife, he assaulted her resulting in her death.

The testimony of PW 1, Stephen Getumo, was that he was informed of the deceased's death in the morning and he went to the scene where he found the deceased in a distressed condition nursing injuries on the hands and legs. The deceased was carried to the roadside but she died before she could be taken to hospital.

PW 2, Ongori Mochoge was only informed of the incident and the deceased had passed away. He also learnt that the accused had been arrested.

The prosecution did not call any further witnesses as I rejected the application for adjournment when the matter came up for hearing today, 7th August 2018. I considered that the prosecution had not taken sufficient steps to locate witnesses and bond them since the matter was last heard on 25th July 2016.

The only evidence before the court does not implicate the accused in the murder of the deceased. He was not placed at the locus in quo at the time the deceased was assaulted. Further the cause of death of the deceased was not established. There is insufficient evidence to put the accused on his defence as such. I enter a plea of not guilty under section 306 of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya).

The accused, VINCENT ONGORI MOCHOGE is therefore acquitted of the murder of LILIAN KEMUNTO MOGUSU. He is set free unless otherwise lawfully held.

Ruling read and delivered in open Court this 7th August 2018.

D.S Majanja

Judge

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions

Mr. Okenye, Advocate for the Accused