

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 103 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

PETER NGETICH KIPLANGAT.....ACCUSED

RULING

The accused **PETER NGETICH KIPLANGAT** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

*“On the 1st day of November, 2013 at Nessuit Location in Njoro District within Nakuru County, murdered **EVALINE CHEROP MUTAHI**”.*

The accused pleaded ‘**Not Guilty**’ to the charge. Although the accused had been arraigned in court in 2013 the original court file went missing necessitating the opening of a skeleton file. Thus it was not until 16/3/2017 that the trial commenced. The prosecution called three (3) witnesses in support of their case. A

PW1 PAMELA AKASA WANYONYI and **PW3 AGNES WACOKE NGUMBI** were both nurses at the Njoro hospital. All these witnesses told the court is that on the morning of 1/11/2013 upon reporting on duty they found that a female patient by the name ‘**EVALINE CHEROP**’ had been admitted at that facility during the night. She had various wounds cuts and bruises on her person including a deep cut to the left leg. By the time **PW1** and **PW2** saw the patient she was already dead. Neither can tell whether the deceased died before or after admission to the hospital or whether she was dead on arrival. The medic night nurse one ‘**Justus Masangi**’ who received the patient was not called to testify.

PW2 DR. TITUS NGULUNGU was the pathologist who conducted the autopsy on the body of the deceased. On the basis of his examination **PW2** concluded that the cause of death was ‘**multiple bodily injuries involving the head chest, upper and lower limbs attended by brain bruising and raised intracranial pressure due to multiple blunt object trauma in keeping with homicide**’. **PW3** filled and signed the post mortem report which he produced as an exhibit **P.exb 1**.

Aside from proving the cause of death no other ingredients of the charge was proved. There is no evidence on how the deceased could have sustained the injuries which led to her death. No evidence was adduced to confirm the identity of the deceased. More importantly there was absolutely no evidence to link the accused to the assault of the deceased.

None of the prosecution witnesses have mentioned the accused at all. The investigating officer did not testify to explain his decision to charge the accused. There was not even a pretence at proving a prima facie case. I therefore enter a verdict of ‘**Not Guilty**’ and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated and delivered in Nakuru this 3rd day of August, 2017

Ms Kerubo holding brief Ms Mugweru

Mr. Chigiti for DPP

MAUREEN A. ODERO

JUDGE