



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL CASE NO. 104 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WINFRED NDILA KIOKO.....ACCUSED**

**RULING**

The accused Winfred Ndila Kioko is facing a charge of murder. She is accused of killing James Mulinge Ndaisi on the 5<sup>th</sup> July 2014 at around 2.00am at Kingstone Slums in Industrial Area Nairobi. When the charges were read to her she pleaded not guilty. The prosecution presented evidence of seventeen (17) witnesses in support of their case.

The evidence against the accused in summary is simple. The accused and the James Mulinge Ndaisi, the deceased, were friends. Unknown to the deceased, the accused had another man friend, Patrick Musyoki Ndeto (PW3). On 4<sup>th</sup> July 2014, the deceased booked a room at Heros Pub Makuti within Kingstone Slums Industrial Area. He was served by Dominic Ogoro (PW13). He was taken to room number 9 at the said Club.

Further evidence shows that the deceased was drinking that evening at Makuti Pub in the company of other people including the accused, Patrick Musyoki, Paul Mwangi (not a witness) and Rose Mwendu (PW8). It seems that the accused went home with Patrick Musyoki, left him sleeping and returned to the Pub. Diana Ngina (PW1) who lived with the accused saw the accused bring Patrick Musyoki home and go away. Dominic Ogoro saw the accused go to his room with the accused but shortly thereafter the deceased returned and told Dominic that he was going away but would return later. He did not return that night.

The accused and the deceased went to accused's house. They got there at about 4.00am. Diana who was sleeping on a seat with her baby heard the deceased demand to see Patrick Musyoki and confirm whether indeed he was accused's brother. It seems that the accused had told the deceased that Musyoki was her brother and the deceased sought to confirm this. According to Diana an argument ensued between the accused and the deceased and a fight broke out. Diana took her baby and went out of the house. The accused and the deceased continued fighting and after they stopped the deceased left.

Evidence shows that the accused picked a knife and followed the deceased downstairs. The commotion of their argument and fight woke up the neighbours including Martha Nzula (PW2). The accused stabbed the deceased and returned to her house to wake Musyoki up. Evidence by Diana, Martha and Musyoki shows that the accused told them she had stabbed the deceased. She told Musyoki they must leave. They went to the house where Elizabeth (PW7) lived with other girls including Mwendu (PW8). They were accommodated there until the morning when the accused was assisted to escape. In the meantime the deceased fell down near the Makuti Pub and later died. A report was made to the police who visited the scene and retrieved the body. The accused was at large after this incident. She was arrested on 27<sup>th</sup> October 2014 at Kware Area in Embakasi and charged with this offence.

The death of the deceased was medically confirmed by Dr. Bernard Midia (PW17) who examined his body on 5<sup>th</sup> July 2014. The doctor told the court that the deceased died due to massive haemorrhage due

to penetrating chest injury due to stab wound.

I have examined this evidence carefully. The accused was seen with the deceased by several people who included her friends. She quarreled with the deceased perhaps over Musyoki her other man friend. They fought and this fight was witnessed by Diana. The deceased decided to leave but the accused went back into the house she shared with Diana and picked a knife. She followed the deceased and stabbed her. She went back holding the knife she had used and Diana saw it had blood on it. She left it inside the house where it was picked by Evans Musyoka (PW6) and kept on the roof of the house. Musyoka later showed police the knife. The accused told several people including Diana, Martha and Musyoki that she had stabbed the deceased. The injuries on the deceased that were confirmed by the doctor are consistent with stab wounds from a sharp object. The accused was helped to escape by Elizabeth and other friends of hers. She was at large until the time of her arrest four months later.

This is strong evidence. It makes out a case on which a reasonable court, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence. I am therefore satisfied that the prosecution has made out a prima facie case against the accused person and in compliance with Section 306 (2) of the Criminal Procedure Code I do hereby place the accused to her defense. She is hereby informed of her right to inform this court the manner in which she wishes to defend herself, whether she will testify under oath or without taking oath and whether she wishes to call any witnesses to her defense.

Orders shall issue accordingly.

**Delivered, signed and dated this 21<sup>st</sup> day of September 2017.**

**S. N. MUTUKU**

**JUDGE**