

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 94 OF 2014

REPUBLIC.....STATE

VERSUS

MARY ATAI.....ACCUSED

RULING

The accused **MARY ATAI** faces a charge of murder. The prosecution having closed its case, the accused was called upon to give her defence and she did duly make an unsworn defence. The matter is now pending before me for judgment.

I note that during the trial no doctor came to court to give evidence in the matter. Due to the lengthy doctor's strike and being unable to predict when doctors would resume duty the post-mortem report was admitted into evidence by consent.

However having read the record I am of the opinion that it is necessary to obtain the evidence of a doctor to enable the court reach a just conclusion in this matter.

Section 150 of the Criminal Procedure Code provides that

“150 A court may at any stage of a trial or other proceeding under this code, summon or call any person as a witness or examine any person in attendance though not summoned as a witness, or recall and re-examine a person already examined, and the court shall summon and examine or re-call and re-examine such person if his evidence appears to it essential to the just decision of the case....”

It is my considered opinion that the evidence of the pathologist is essential to the just decision of this particular case.

Invoking the above provision of law I hereby direct that Dr. Titus Ngulungu who prepared the post-mortem report in this case be summoned to give evidence on the same before I prepare my judgment.

Summons to issue as directed.

Read in open court

Mr. Obutu holding brief for Mr. Mongeri

Mr. Chigiti for DPP

Court – Summons to issue to Dr. Titus Ngulungu. Hearing on 25/10/2017.

Maureen A. Odero

Judge

13/10/2017