

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL CASE NO. 69 OF 2014

(Formerly Kisii High Court Criminal Case No. 104 of 2013)

REPUBLICPROSECUTOR

VERSUS

ANDREW GINTU CLEOPHAS.....ACCUSED

REASONS FOR ACQUITTAL

1. On 16/03/2016 this Court found the Accused herein, **ANDREW GINTU CLEOPHAS**, not guilty of the murder of **DOROTHY NG'ARASI** and acquitted him under **Section 306(1)** of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya. The Court reserved its reasons for the acquittal.
2. The Accused was arraigned before the High Court at Kisii on 08/10/2013 and charged with the offence of the murder of **DOROTHY NG'ARASI**. The particulars of the offence were that the Accused person committed the murder on the 16/11/2012 at Kibarange Village, Kibarang Sub-Location in Kuria West of the Migori County within the Republic of Kenya. He denied committing the offence and was ordered to stand trial.
3. Sometimes in 2014 this case was transferred to this Court upon the establishment of a High Court station.
4. The case was thereafter fixed for hearing on several occasions but did not proceed due to lack of prosecution witnesses and in all those instances the hearings were adjourned on the prosecution's applications. On 20/01/2016 the prosecution applied for Warrants of arrest for the prosecution witnesses who were allegedly refusing to attend court despite service of the police bonds.
5. Come the 16/03/2016 as there was no progress on the part of the prosecution in availing the witnesses, the prosecution closed its case without calling any witnesses. It is on the basis of that decision on the part of the prosecution that this Court ordered the release of the Accused person.
6. For the prosecution to secure a conviction in a murder charge, the following three ingredients must be affirmatively proved: -
 - (a) ***Proof of the fact and the cause of death of the deceased;***
 - (b) ***Proof that the death of the deceased was the direct consequence of an unlawful act or omission on the part of the Accused which constitutes the 'actus reus' of the offence; and***
 - (c) ***Proof that the said unlawful act or omission was committed with malice afterthought which constitutes the 'mens rea' of the offence.***
7. Going by the record, none of the ingredients of the offence was proved and as such the offence was not established against the Accused person.
8. Having found that there was no nexus at all between the death of the deceased and the Accused person, it served no legal purpose to place the Accused person on his defence hence the acquittal.

DELIVERED, DATED and SIGNED at MIGORI this 28TH day of APRIL 2016.

A. C. MRIMA

JUDGE