

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 26 OF 2012

REPUBLIC..... PROSECUTOR

VERSUS

DANIEL KAGE CHEGE..... ACCUSED

J U D G M E N T

1. The accused **Daniel Kage Chege** is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204 (Cap. 63)** Laws of Kenya. The particulars of the offence are that on the **28th February, 2012** along **Kitale - Saboti Road** within **Trans-Nzoia County** jointly with others not before court unlawfully Murdered **Violet Akware Imaya**.
2. The prosecution called five witnesses in support of their case. **PW1, Barnabas Simiyu Munialo** the widower of the deceased gave evidence that he was driving home with the deceased on the material day at about **6.00 pm**. Another motor vehicle blocked the road and three people armed with firearms emerged from the motor vehicle. PW1 and the deceased were fired at. PW1 managed to escape into a nearby thicket. The deceased who sustained bullet wounds died at the scene. Police officers among them **PW4 PC Michael Alunga** visited the scene. During investigations PW1 identified the accused as one of the attackers.
3. **PW2 William Polycap Imaya** the father to the deceased and **PW3 Samson Imaya** a cousin to the deceased identified the body of the deceased to the doctor who carried out the post mortem. The accused was later arrested and charged after he was identified in an identification parade conducted by **PW5 CIP Patrick Gogo**.
4. When placed on his defence, the accused gave sworn evidence. No witnesses were called. The accused stated that prior to his arrest, he was a watchman at the farm of PW1 in Trans-Nzoia County. He testified that on the material day, he went on with his work as usual tending to the farm and to the domestic animals. That on 7/7/2012, he went to Kisii where he had gone to collect fencing materials from one of the wives of PW1. He left Kisii on 8/7/2012 and spent the night in Eldoret at a friend's house as public transport had been paralyzed by a strike. At about 3.00 am the accused was arrested by police officers who handcuffed him and escorted him to Eldoret police station then to Kitale police station. His house was later searched but nothing was recovered. The accused was then identified by his employer (PW1) at an identification parade then brought to court.
5. At the close of the defence case, the defence filed written submissions. The prosecution relied on the evidence on record. I have considered the submissions and the evidence on record.
6. The key evidence herein is that of PW1 who was at the scene at the material time. PW1's evidence is that he knew the accused as his employee and saw him at the scene armed with a firearm. During cross-examination PW1 stated that he did not mention the accused to the police when he recorded his first statement as he was not certain. PW1 later identified the accused at an identification parade. The identification parade was however of no value since PW1 knew the accused. There is no other evidence that links the accused to the offence in question. With PW1 having expressed doubts on whether the accused was among the attackers, I would give the benefit of doubt to the accused.
7. With the foregoing, the accused is acquitted under Section 306 (2) of the Criminal Procedure

Code.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Kitale this 25th day of May, 2016.

B. THURANIRA JADEN

JUDGE