



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 58 OF 2013

REPUBLIC PROSECUTOR

VERSUS

DANIEL KARANJA WAIRIMUACCUSED

JUDGMENT

The accused **DANIEL KARANJA WAIRIMU** 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 6th day of June 2013 at Topoti Trading Centre in Njoro District within Nakuru District murdered GIDEON MWAMBA”

The accused entered a plea of ‘**Not Guilty**’ to the charge and his trial commenced before ‘**Hon. Justice Roseline Wendoh**’ on 12/12/2013. The prosecution only managed to call two (2) witnesses in support of their case despite the case having been active from 2013 to 2016 a period of three (3) years. Finally on 25/2/2016 the prosecution were given a last adjournment in the matter when the hearing next came up on 5/4/2016 the prosecution had one witness, a doctor in court but no copy of the post-mortem report was available. The doctor therefore could not testify and had to be released. This omission would have been inexcusable. If **MS NDEDA** for the accused had not revealed that since 2013 when the trial commenced no copy of a post-mortem report had ever been served upon her. On the whole the conduct of the police/prosecution in this case was below par.

An analysis of the evidence reveals that no *prima facie* case was established. As stated earlier the doctor did not testify in this matter. Thus no proof was tendered to show the cause of death of the deceased. No post-mortem form was produced. Proof of cause of death is a crucial ingredient of any murder charge. Failure to prove the cause of death is fatal to the prosecution case and on this basis alone the accused would be entitled to an acquittal.

The evidence of the two prosecution witnesses is not of much help. They both stated that they found the deceased lying inside her house bleeding and injured. The door to the house of deceased was broken. The deceased was unable to talk and did not name his attackers. Neither **PW1** nor **PW2** saw the people who attacked and injured the deceased. The accused was only suspected because he claimed that the deceased owed him money. No witness saw the accused attack and fatally injure the deceased on account of this alleged debt.

Lastly the true identity of the deceased remains in doubt. The name of the deceased is given in the charge

sheet as '**Gideon Mwamba**'. The witnesses refer to the deceased as '**Vaile**'. **PW1** in his cross-examination states

“Vaile (deceased) was a tenant in my plot. I do not know Gideon Mwamba”

PW1 goes on to state

“I did not witness the fight between accused and Vaile”

I find that the case against the accused is based on suspicion alone. Suspicion no matter how strong cannot form the basis for a conviction. No *prima facie* case had been proved against the accused. I enter a verdict of '**Not Guilty**' and I acquit accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated in Nakuru this 27th day of July, 2016

Maureen Odera

Judge

27/7/2016

Ms Kipruto holding brief for Mrs Ndeda.