

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 14 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ESTHER WANJIRU MBARIA.....ACCUSED

R U L I N G

1. The Deceased in this case, **L W K**, was brutally killed on 24th October 2010 in a forest near her home where she had gone to collect her three cows in the evening from grazing. The attack upon her was so brutal that her spinal code and column were completely severed at the neck. She had other grievous injuries in other parts of the body. there was suspicion that she may also have been sexually assaulted. The attack appeared to have been by panga or some other such sharp weapon.
2. This is a case that cries out loudly for justice to be done for the Deceased and her family by finding her killer or killers and bringing them to book.
3. Learned **Senior Principal State Counsel**, Mr. Njeru, has applied to be permitted to enter a *nolle prosequi* under **section 82** of the **Criminal Procedure Code** and terminate these proceedings. He states that he has carefully evaluated the available evidence and that he has formed the considered view that the Republic will not be able to establish a *prima facie* case against the Accused herein, **Esther Wanjiru Mbaria**. He therefore intends that a public inquest into the death of the Deceased be conducted. Learned counsel for the Accused, Mr. Mbutia, has no objection to this course of action.
4. I have carefully read through the statements of witnesses and other evidence intended to be relied upon by the Republic in this case. Copies of the same were supplied to the court as well as to the Accused's learned counsel.
5. The Accused was arrested and charged with the murder of the Deceased solely upon an allegation by one witness that she had heard the accused utter threats against the life and limb of the Deceased upon suspicion that the Deceased was having an illicit love affair with the Accused's husband. Such threats were allegedly uttered about thirteen days before the Deceased was killed.
6. Though that bit of evidence was a good basis for a thorough investigation of the possible involvement of the Accused in the murder of the Deceased, it cannot itself, without more concrete evidence, form the basis of a successful prosecution of the Accused. I have not found in the evidence intended to be relied upon by the prosecution any such concrete evidence of the Accused's involvement in the murder of the Deceased. I therefore respectfully concur with learned Senior Principal State Counsel that it would be more useful at this stage to conduct an inquest into the death of the Deceased.
7. I will in the event permit the **Director of Public Prosecutions** (through the Senior Principal State Counsel) to enter a *nolle prosequi* under section 82 of the Criminal Procedure Code. **Article 157(6) & (8)** of the **Constitution of Kenya 2010** refer.
8. The Accused is hereby discharged. She is however warned that this discharge is not a bar to any subsequent prosecution upon the same facts. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 18TH FEBRUARY 2015

H.P.G.WAWERU

JUDGE

DELIVERED THIS 20TH DAY OF FEBRUARY 2015