



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CRIMINAL CASE NO.20 OF 2011**

**REPUBLIC** .....

**PROSECUTION**

**VERSUS**

**MONICA AMOJONG** .....

**ACCUSED**

**RULING**

1. On 23/8/11, Monica Amojong (“*the accused*”) was charged with the offence of murder contrary to Section 203 of the Penal Code. It was alleged that on the 7<sup>th</sup> day of August, 2011 at Kangor Village, Amagoro Sub-location, Amagoro Location in Teso North, the accused murdered one Faith Nelima.

2. The case came up for hearing several times but was adjourned for reasons on record. Finally, it came up for hearing on 31/3/14 but the prosecution failed to call any witness to testify. Mr. Kamau, Learned State Counsel opted to rely on the P3 Form dated 23/08/2011. In the report, when undergoing mental examination on her suitability to plead, it was indicated that the accused regretted having killed her child. Mr. Kamau submitted that based on the statements in the prosecution file and the admission in the P3 Form evidence pointed at the accused as the one who killed Faith Nelima. He urged the Court to rely on the P3 Form and put the accused on her defence.

3. Mr. Juma, Learned Counsel for the accused submitted that the submissions of Learned State Counsel cannot constitute evidence. That such evidence could not be entertained unless the concerned witnesses attended Court and testified. That the P3 Form could not be relied on as the medical doctor who prepared the same had not attended to be cross-examined on it. He therefore urged the Court to find that there was no sufficient evidence that had been produced to warrant the accused being put on her defence and she should be acquitted.

4. I have considered the submissions of the respective Counsel. The allegations against the accused are that on 7<sup>th</sup> August, 2011 at Kangor Village, then aged 16 years, the accused murdered one Faith Nelima. The State did not call any witness in support of its case. However, a P3 Form and submissions of Counsel were relied on.

5. Has an offence of murder been established? If so, is the accused guilty of the same? Firstly, for murder to have been committed, it must be established that a life of someone has been taken away unlawfully by another in circumstances that, that other person maliciously intended the harm or death of such person. In this case, it was not shown that a person by the name Faith Nelima existed and/or her state of health. It was also not proved that on the alleged day, the accused did any act that resulted in the demise of the deceased. There was also no post-mortem report that was produced to show what caused the death of the deceased.

6. To this end, I am not satisfied that the State proved that an offence of murder had been committed. The statements made by witnesses to the police can not be relied on as evidence in a criminal trial without having those witnesses subjected to testify on them and be cross-examined accordingly. In my view, Mr. Kamau could not be cross-examined on those statements as he was not the maker thereof. The failure to call the makers of those statements made the information contained therein nothing but mere allegations that has no evidential value.

7. As regards the alleged confession in the P3 Form wherein it is alleged that the accused regretted

killing her baby, the law is clear on how a confession is to be made and received. The statement in the P3 Form relied on by the prosecution does not satisfy the requirements of the law as to confessions. Further, the statement was written by a Dr. Kisika who was never called to testify. To my mind therefore, the P3 Form did not establish that the accused had killed anyone. In any event, the P3 Form did not disclose the name of the alleged baby who had allegedly been killed.

8. In the circumstances, I do not think that the prosecution has established any *prima facie* case to warrant the accused to be placed on her defence. Accordingly, I find no case against the accused and I acquit her under Section 210 of the Criminal Procedure Code.

**DATED** and **Delivered** at Bungoma this 07<sup>th</sup> day of April, 2014.

**A. MABEYA**

**JUDGE**