

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 13 OF 2009

REPUBLIC

VERSUS

MARGARET NYAGUTHI KIMEU ACCUSED

RULING

1. The Applicant, **Margaret Nyaguthi Kimeu**, is charged with the offence of murder contrary to **section 203 and 204** of the **Penal Code**.

The particulars of the offence being that on 26th day of December 2008 at **Kwale Trading Centre, Komarock Location of Kandundo District** within the **Eastern Province** murdered **Gabriel Mutinda Munyaka**.

2. The prosecution called a total of nine witnesses. The case for the prosecution is that on the material day at about 9.00 p.m., the deceased was among a group of people consuming *Chang'aa* at a bar in **Kwale Market**. Amongst the group was PW6 **Anthony Mutisya Mutuku** who upon leaving the *Chang'aa* den was soon thereafter followed by the deceased who informed him that he had been stabbed by the accused. The deceased who was bleeding from the chest then collapsed and died. A report was made to the area Assistant Chief who made a report to the police. The scene was visited by the police. The accused was subsequently arrested and investigations commenced.
3. The investigations carried out included the recording of the statements of the witnesses who visited the scene. The said witnesses included PW1 **David Sila Musyoka** and PW2 **Patrick Kituku Mutuku** who heard about the stabbing and rushed to the scene but found the deceased already dead.
4. PW3 **Peter Mutua Muema** the Assistant Chief received a report of the death and visited the scene together with a police officer, PW5 **C.I William Cheruiyot**. It was the evidence of the Assistant Chief and the police officer that they saw some blood stains at the *Chang'aa* drinking den. It was further testified that there were also some blood stains on a green blouse that the accused was wearing. The green blouse was recovered and produced in court as an exhibit by PW8 **P.C. Tolbert**. A blood stained shirt was also produced by PW8 as an exhibit. PW8 further testified that he escorted a blood sample, the shirt and the blouse to the Government Chemist for analysis.
5. The Government Chemist, PW7 **Henry Kiptoo Sargon** gave evidence that established that the blood stains on the shirt and the blouse were of the same male origin. The Government Analyst's bid to generate DNA profiles from the blood samples were not successful. The evidence of the Government Analyst also failed to link the DNA profiles of the blood stains on the shirt and blouse to the accused. There was no evidence adduced on how the shirt was recovered. The memo form and the Government Analyst reports were not produced in court as exhibits. In the end, the evidence of the Government Analyst failed to implicate the accused.
6. The only evidence on record that links the accused to the offence herein is the dying declaration referred to by PW2. The dying declaration requires other independent evidence to corroborate the same. The dying declaration was made by the deceased just before he collapsed and died.
7. From the evidence of PW6 it is clear that there were other people at the *Chang'aa* drinking den when the offence took place. These are crucial witnesses who ought to have been called to testify.
8. With the gaps pointed out hereinabove in the prosecution case, no *prima facie case* has been established against the accused. Consequently, I acquit the accused under **section 306 (1)** of the Criminal Procedure Code.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 30th day of October 2014.

B. THURANIRA JADEN

JUDGE