



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO.1 OF 2009

REPUBLIC STATE

AND

JIM KARIUKI NYAGAACCUSED

RULING

BACKGROUND

The Accused in this case took his plea before Justice Mary Kasango on 19th January 2009 when a plea of not guilty was entered for the same and the case fixed for hearing on 28th April 2009 when the same could not be heard since the trial judge was on transfer.

On 16th July 2009 and 18th November 2009 the matter was fixed for hearing before Justice M.S.A. Makhandia as he then was when the same was taken out due to pressure of work. On 3rd February 2010 the accused appeared before Justice Sergon when the matter was adjourned on an application by the State to enable them carry further investigation.

On 29th September 2010 the trial commenced before Justice Sergon who heard two witnesses before proceeding on transfer. On 5th December 2013 the matter was fixed for hearing before me when the rights of the accused under **Section 200** of **CPC** were explained to him upon which he opted that the matter proceed from where it had reached and the matter fixed for hearing on 29th January 2014.

On the said date Mr. Njue for State applied for adjournment on the basis that the CID office was unable to get in touch with the investigation officer who was then attending a training to which Mr. Gichoi for the accused objected and the court granted final adjournment and fixed the matter for hearing on 27th February 2014.

On the said date Mr. Cheboi appeared for the State and submitted that the witness who was to appear in the matter had disappeared and therefore opted to close the prosecution case in view of the order of court of 29th January 2014 and parties invited to make submissions on whether the accused had a case to answer.

SUBMISSIONS

It was submitted by Mr. Gichoi that the prosecution had failed to prove any case against the accused person since PW1 the husband of the deceased testified that he was informed about the death and that he was only able to identify certain sword which was alleged to have been recovered from his house but did not see the same being recovered.

PW2 only testified on how the accused was arrested and that there was no link between the accused and the deceased and further no postmortem report was presented to confirm the death.

Under **Section 306** of the **Criminal Procedure Code** the court is required to determine whether the accused person has a case to answer and this is determined by whether if the accused keeps quite, the evidence of the prosecution are such that a conviction will result.

It is clear from the evidence on record that PW1 only testified on the recovery of a sword on 25th December 2009 and that he saw the chief come out of the accused's house with the knife which he was told was recovered under the bed. PW2 Francis Gachie Mugo the chief testified that on 25th December 2009 he saw a young man ran away when he saw him and he thought that he was dealing with cannabis sativa when he entered into his house he found him seated on the floor and found a unique sword under the bed.

He further stated that he had earlier heard a report that one member of his community had lost a sword from his house and the same was subsequently identified by PW1. Under cross examination he stated that the accused had told him that the sword had been sold to him by one Munyiri Karugo.

It is therefore clear that at the close of the prosecution case no *prima facie* case had been established against the accused person to call upon the accused person to offer a defence thereto.

It is unfortunate that RUTH WANJIKU MUTERO lost her life and her family expected justice from the court, but that must also be balanced against the right of the accused person to free and fair trial under **Article 50 (2) (e)** which is a right to have the trial begin and concluded without unreasonable delay.

I would therefore acquit the accused person as provided for under **Section 210** of **CPC** and order that the accused be released from custody forthwith unless otherwise lawfully held and it is so ordered.

Signed and dated this day of 2014

J. WAKIAGA

JUDGE.

Delivered by Justice J. Ngaah on behalf of Justice Wakiaga this 18th day of December 2014

J. NGAAH

JUDGE.

In the presence of:

----- for Appellant

----- for Respondent