



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 83 of 2006

REPUBLIC.....PROSECUTOR

-VERSUS -

SUSAN KANGAHA KIGODE.....ACCUSED

RULING

The accused person Susan Kangaha Kigode faces a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged in the charge that on the 2nd day of August 2006, she murdered Jane Opande. She pleaded not guilty to the offence.

It is important to briefly narrate the history of this case before going to the ruling. The trial was conducted and almost concluded by Apondi, J. He put the accused person on her defence and she proceeded to give the defence. Her counsel Mr. Ikapel made the final submissions and the case was fixed for judgment on 12th February 2010. The honourable judge did not deliver the judgment but declared the trial a mistrial for the reason that the assessors had been excluded by error at final stages of the trial. The case was then referred to another judge for the trial to begin afresh.

The defence offered a plea to a lesser charge before Ombija, J which was rejected by the State after several mentions awaiting directions of the Director of Public Prosecutions.

The case started *de novo* before Mwilu, J who heard three prosecution witnesses. I took over this case later after the trial judge was transferred to another High Court Division. On application by the defence, it was ordered that the case starts afresh. The case came up for hearing, the prosecution expressed their concerns that it had become very difficult for them to trace the witnesses some of whom had already testified twice before the judges who heard the matter. An application to review the earlier order was successfully made by the prosecution and the court ordered that the case proceeds from where Mwilu, J reached.

The case came up for hearing on 20/03/13 where the State counsel Mr. Karuri informed the court that the prosecution had completely failed to trace the witnesses and thereby closed the prosecution's case.

The court will then proceed to analyse the evidence on record of the three prosecution witnesses heard by Mwilu, J. PW1 testified that on the 02/08/2006, he was residing at Kibera slums as he attended Temple High School in Nairobi. He went to buy a matchbox in a kiosk at around 9.00 p.m. when he saw the accused whom he knew as "Susan" sitted outside her house. The deceased came later and started a quarrel with the accused. The accused explained to PW1 that there was a misunderstanding between the

two of them. The two women later fought with the deceased sustaining an injury on the upper part of the neck. The husband of the deceased came to the scene and assisted by PW1 and others, took the deceased to hospital where she died while undergoing treatment.

PW2 testified that she also witnessed the fracas between the accused and the deceased. She said PW1 was at the scene chatting with her when the deceased confronted the accused and accused her of spreading malicious gossip about her. The two women started fighting prompting PW2 to go call the husband of the deceased. When she returned to the scene, PW2 found the deceased screaming that she had been stabbed with a knife. The deceased was taken to hospital and accused later arrested from her house. The deceased died in hospital the same night.

PW3 was an identifying witness at City Mortuary Nairobi where the doctor performed postmortem on the deceased's body.

The doctor did not testify in this case in order to tell the court what the cause of death was. Neither did the investigating officer and other witnesses testify. In the absence of the postmortem report, the cause of death remains unknown. The evidence of the two eye witnesses is not of any help to the court without the cause of death being established.

It is my considered opinion that the evidence on record is not sufficient to support the charge of murder. I find that the accused person has no case to answer and I hereby acquit her under **Section 306** of the **Criminal Procedure Code** of the offence of **murder** as charged. The accused is hereby set at liberty unless otherwise lawfully held.

F. N. MUCHEMI

JUDGE

Ruling dated and delivered on the **30th** day of **APRIL, 2013** in open court in the presence of the accused and her counsel Mr. Etole and the State counsel Mr. Karuri.

F. N. MUCHEMI

JUDGE