

No. 108/2013

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 69 OF 2011

REPUBLICPROSECUTOR

VERSUS

DORCAS MUENI MORRIS.....ACCUSED

RULING

1. **Dorcias Mueni Morris** hereinafter “*the accused*” was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63).

Particulars of the offence are that on the 9th day of September, 2011 at Emali Market, Emali location, Nzau District within Makeni County murdered **Yvonne Loko**.

2. The accused was arraigned in court on the 18th November, 2011. When the case came up for hearing on the 20/3/2012, the case was adjourned because witnesses had not been bonded by the investigating officer.
3. The case came up next on the 16/5/2012. The State Counsel told the court that witnesses had been bonded but they were not in court. The investigation officer was also absent. The learned State counsel beseeched the court to grant them a last adjournment. The last adjournment was indeed granted. When the matter came up on 7th November, 2012 the case was not reached. On the 27th February, 2013 the case failed to proceed because witnesses were not bonded. The learned State counsel now sought a final adjournment which was indeed granted.
4. Today, **Mr. Mwangi** for the State claimed that the investigation officer was called to man the by-election exercise at Kibwezi. He was therefore not able to appear in court. The same applied to the witnesses. This is a case that was adjourned on the 27th February, 2013. Today’s date was later fixed by the Deputy Registrar on the 18th September, 2013. The prosecution failed to demonstrate why the witnesses were not in court. In rejecting the application, I noted that no by-elections are being held in Makeni Constituency. Consequently witnesses had no reason not to attend court.
5. From the foregoing, it is apparent that at the close of the case, the state had not called any evidence. Therefore there was no evidence of death having occurred. Further, there is no evidence that the offence of murder was committed by the accused.
6. In the premises I make a finding of not guilty in respect of the accused. Accordingly, she is acquitted pursuant to the provisions of Section 306(1) of the Criminal Procedure Code.
7. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 17TH day of OCTOBER, 2013

L.N. MUTENDE

JUDGE