



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HCCC NO. 74 OF 2011**

***LESIIT J.***

**REPUBLIC..... PROSECUTOR**

***Versus***

**GRACE NYOROKA.....ACCUSED**

**RULING**

The accused is charged with murder contrary to section 203 as read with section 204 of the Penal code. According to the proceedings of this case. This is a retrial of the accused following an order by the court of appeal. The case was heard by Hon. Ouko Judge who took the evidence of the only two witnesses in the matter. When I took over the case the prosecution was unable to procure any further witnesses for the prosecution. In the meantime after perusing the file and after realizing that the accused had a long standing mental illness I ordered for a psychiatrist evaluation to ascertain her mental status. In order to make a comprehensive order at this stage of the proceedings. It has taken 5 months for the comprehensive report to be made due to the difficulty in tracing the relatives of the accused. The doctors opinion was that the accused has paranoid schizophrena in remission but that her current mental status is normal and that she is currently fit to stand trial. Turning back to the ruling the prosecution adduced the evidence of two witnesses. There was PW 1 Harriet Karoko a neighbor of the accused. Her evidence was that on the morning of 9<sup>th</sup> January 2009 the accused person called her to go and see. Harriet said that when she went to the home of the accused which was next door to her she saw the deceased outside the house with cut wounds on the back of the head and the hand. He says that she was unconscious when she saw her. In the meantime the accused person had entered her house and was inside when all this was going on.

PW2 Julius Kirimi was a son of the accused. He said that on the 8<sup>th</sup> of January his mother the accused quarreled with the grandmother the accused but he did not know what the quarrel was about. Julius said that he heard his grandmother calling his mother a fool.

The next morning Julius said that he went to look for fodder for the cattle he says that while at the river he heard noises from his home. He said that he rushed back only to find that the deceased had been cut and that the accused was holding a panga. He said that he took the panga from the accused. He said that PW1 came after the incident and that thereafter he took the deceased to a clinic.

Julius told the court that his mother had mental illness but that she was never violent. Julius also explained that the deceased had been living with them for three months prior to the incident. Julius said that the deceased was a very old aged man between 90 and 100 years but that she was normal.

From the evidence on record the court was not informed how the deceased died. Neither was the court informed the severity of the injuries that were inflicted on the deceased by the accused or whether the deceased succumbed to the said injuries. Even though there is circumstantial evidence that the accused must have inflicted some injuries on the deceased. There is no evidence to show what caused the death of the deceased.

The prosecution failed to adduce medical evidence to show what caused the death of the deceased. There was also no evidence from the investigating officer to show when the deceased died and what investigations were carried out into the case. As it stands the evidence before the court is insufficient to form the basis of requiring the accused person to answer the charge that faces her.

Since I am satisfied that the accused is currently of sound mind. I will acquit her of this offence and direct that she should be released forthwith.

**DATED AND DELIVERED AT MERU THIS 24<sup>TH</sup> MARCH 2011.**

**LESIIT J  
JUDGE**