

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Revision 1 of 2008

ESTHER WAMBUI NGURE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

This matter drawn to courts attention by Esther Wambui Ngure. The file from court was availed on 21/2/2008.

By that time the hearing and ruling of the trial court had been made in which the suspects were acquitted.

I have perused the record and it is dear the evidence of two doctors who made post-mortem, Dr. Njue, Dr. Wasike of Kenyatta National Hospital examination was not taken because the prosecution failed to avail them despite several attempts and adjournments for the purpose. The prosecution closed its case without calling that evidence that was on 18/12/2007.

In his ruling the court clearly noted that prosecution had failed to prove cause of death. The courts decide the case on the evidence placed before it not otherwise.

I have perused the record and I find Trial Magistrate conducted the proceedings regularly. The only doctor who gave evidence was Dr. Muchiri. He is the one who reported the matter to police. Later he saw deceased getting out of bar while bleeding from the head.

The purpose of jurisdiction of Revision as provided under section 362 Criminal Procedure Code Act 75 is for the High Court to satisfy itself as to correctness legality or propriety of any finding, sentence or order recorded or passed and as to regularity of any proceedings of any such proceedings in the subordinate courts.

In this case the accused were tried for manslaughter. The court heard all evidence offered by prosecution.

It is the finding that death was not proved which was based on evidence then offered. I am satisfied that the trial was conducted regularly and there is no reason to revise orders made by the Trial Magistrate.

Date this 2nd day of April 2008.

J.N. KHAMINWA

JUDGE