



**Republic v Igathe & 3 others (Criminal Case 9 of 2023)
[2024] KEHC 1356 (KLR) (Crim) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 9 OF 2023
CM KARIUKI, J
FEBRUARY 15, 2024
FORMERLY NYAHURURU HIGH COURT CRIMINAL NO. 1 OF 2017**

BETWEEN

REPUBLIC PROSECUTOR

AND

MAGDALENE WANGARE IGATHE & 3 OTHERS ACCUSED

RULING

1. The accused persons were charged with the Offence of Murder Contrary to section 203 as read with section 204 of the *Penal Code* Cap Laws of Kenya.
2. The particulars are that on 22nd December 2016, at Passenga Sub-Location in Nyandarua Central Sub-County within Nyandarua County murdered Anastasia Mwihaki Igathe
3. The Accused pleaded not guilty to the charges and the matter went into a full hearing at the close of the prosecution case the parties were directed to file submissions on whether there was a case to answer.
4. The Accused persons filed but the prosecution did not.

Accused person submissions.

5. It is submitted that, at the close of the prosecution's case, the prosecution has miserably failed to prove their case beyond any iota of doubt to warrant the putting of the accused persons herein on their defense.
6. The charges framed against the accused person have well been spelled out on the charge sheet. Firstly, to commence by stating the following;



- i. That this is a whole family that has been arraigned before court starting from a mother and her four children.
 - ii. That the deceased herein was equally a child to the first accused person and a sibling to the other four accused persons.
 - iii. That ideally the accused persons herein would have been the complainants as it is they who lost their loved one.
7. Secondly, the case at hand is grounded on a long family feud that has co-existed between the accused persons herein and the 1st house of the late Igathe.
 8. Thirdly, the family feud is equally pegged on a Succession Cause that is pending before this court.
 9. Fourthly, the state called a total of witnesses including a government pathologist and their evidence can be summarized as follows;
 10. PW 1; Was the Area sub chief a Mr. Kigotho of Matara sub-location? His evidence was to the effect that he had instructions from his boss the Area chief to go to the suspects/accused persons' home to ascertain whether the deceased had died and/or find out exactly what had transpired in that home.
 11. Coincidentally he is a neighbour to the suspects/ accused persons herein and he is about 200 meters away from their home.
 12. It is further coincidental that he had not heard of any noise and/or scream from the suspect's home.
 13. PW 2, Mr. Timothy Kamau is a sibling to the 2nd up to the 5th accused person by dint of them coming from the 1st house whilst the accused persons come from the 2nd house as the late Igathe was polygamist he was called by a Mr. Muniu Chief who intuned informed the rest about the incident.
 14. It was PW 2's evidence that he lives in Murang'a. In a nutshell, all these witnesses did not live within the vicinity of the suspects.
 15. PW 3 Mr. Stanley Thigari's evidence was as to how they came to learn of the incident and how they took up the initiative of reporting and registering an OB with the Police. He works with the TSC Nairobi
 16. PW 4's Mr. Kibiro informed them what had happened in their home vide a phone call. He lived in Juja Nairobi.
 17. PW 5's evidence, he is the Area sub-Chief of Passenga sublocation Mr. Kingu and he was as to how he went to the home of the suspects/ accused persons herein for his observation he did not find anything incriminating the accused persons and no neighbor ever spoke to him or came forward to give any incriminating evidence. It is also vital to point out that the area chief never testified.
 18. PW 6 was the investigation officer Mr. Mwangi now deceased. His evidence was shoddy and muddled with lots of incircumstances and the same ran shot of a professional investigation. He confirmed that no finger-dusting was ever done at the purported scene of evidence. No dangerous weapon was ever found at the accused person's home. The other officer who was called confirmed that they never got anything from the suspects.
 19. No iota or semblance of blood was ever found at the accused person's home.
 20. Phones to the accused persons herein were confiscated and no incriminating information was ever found to link the accused persons with the offence committed. Therefore, the accused person's car/



Probox was taken for the ultimate purpose of being dusted and no incriminating evidence was equally ever found.

21. Once again, there was no basis for arranging the accused persons in court and worse still for charges of murder.
22. The investigating officer gambled with the life of the accused persons.
23. What he did was to unceremoniously arrange the suspects before court and leave the investigation work to court.
24. Once again, this case is hinged and/or pegged on suspicion, we must again be quick to state that however strong suspicion might be the same cannot boil down into a conviction.
25. Lastly, no eye witness has been availed before the court to tell the court exactly what transpired.
26. To us, this is a case that is ripe to have the accused persons discharged expeditiously for want of no case to answer.
27. In the Nakuru Criminal Case No. 9/2020 Republic v Langat, Judge Matheka acquitted the accused person for want of an eye witness

Determination

28. The court has gone through the evidence on record whereof there are narration of the incident of the fight of the 1st accused and the deceased at the material time and the presence of accused persons at the time of the incident who is said to have joined the assault on deceased to help their mother 1st accused. There are also allegations of people (mob) joining the beating of the deceased and the accused talks of a car coming and picking the deceased. It is not denied that the deceased body was found elsewhere with various injuries which were indicated by the pathologist to have occasioned her death.
29. There is also evidence of pre-existing hostility between the accused and the deceased over the property of Igate late father of accused 2 to 5, and deceased, and also husband to the 1st accused. There have been previous fights between accused 1 and the deceased.
30. It is thus apt for the accused persons to be put on their defense to exonerate themselves from the pieces of evidence putting them at the scene at the material time of the assault upon the deceased.
31. Thus, the accused persons are found to have a case to answer and thus put on their defense.

DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 15TH DAY OF FEBRUARY 2024.

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CHARLES KARIUKI

JUDGE

