



Republic v Thuo (Criminal Case 19 of 2018) [2024] KEHC 9676 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 19 OF 2018
SN MUTUKU, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MARGARET WAMBUI THUO ACCUSED

RULING

1. Margaret Wambui Thuo, the accused herein, is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge are that on the 6th September 2018 at Oloolua Area in Ngong Township, Kajiado County in the Republic of Kenya, she murdered Denis Saruni Mutunkei.
2. The accused pleaded not guilty to the charges. The matter was subjected to a full trial in which eight (8) witnesses testified for the prosecution. On 28th May 2024, the prosecution closed its case.
3. The duty of the court at this stage of the trial is to determine whether the evidence tendered by the prosecution is sufficient to warrant the accused persons to be placed on her defence in accordance with section 306 (2) of the *Criminal Procedure Code*.
4. The evidence on record reveals that the accused and the deceased were in a relationship. The evidence on record shows that on 5th September 2018 at around 9.50pm, the accused went to the home of Jocylene Murugi, PW2, and told her that the deceased had refused to open the door for her. PW2 is aunt to the deceased and they lived in the same compound. The accused left and returned shortly to inform PW2 that the deceased had opened the door for her.
5. On 6th September 2018, the following morning at about 9.00am, Kevin Lotiken, PW1, a cousin of the deceased received a distress call from his grandmother. On PW1 went to find out what the matter was. He found the deceased lying down crying in pain. His clothes were soaked in blood. PW1 rushed the deceased to hospital at Trinity Hospital in Ngong. The deceased was referred to Kikuyu Mission Hospital. The deceased was referred to Karen Hospital where he died while undergoing treatment.



6. PW1 testified that at Trinity Hospital the deceased told him that he had been stabbed by the accused after a disagreement.
7. In addition to the evidence of PW2 and that of PW1, there is evidence of PW6, PC Quinto who presented Safaricom call data and location of subscribers in several telephone numbers including telephone number 0716XXXXXXX. This number is registered in the name of the accused. The accused's movement as shown through the data from her telephone number shows that she moved from Maombi Hill in Nyandarua on 5th September 2018 to Nakuru to Nairobi and finally to Oloolua in Ngong where she arrived at about 9.30pm. According to PW6, the accused remained in Oloolua until 6th September 2018 until 10.30am when her location changed to Ngong Town.
8. That the deceased died is not in dispute. This has been confirmed through a post mortem report, Ex.1, produced by Cpl Bernard Onyango, PW8, the Investigating Officer shows that the deceased died due to cardio-pulmonary failure due to penetrating force trauma.
9. I have considered this evidence. It places the accused at the scene of crime. Mobile data produced in court shows that the accused and the deceased had a disagreement. Although there is no direct evidence pointing the accused as the person who stabbed the deceased, I am persuaded through mobile data and the evidence of PW2, which places the accused at the scene where she remained until the following day when she left.
10. The deceased also told his cousin, PW2, that it was the deceased who had stabbed him. I am satisfied that the prosecution has demonstrated a *prima facie* case against the accused and in compliance with section 306 (2) of the [Penal Code](#), I find that the accused has a case to answer. She is hereby placed on her own defence. She is informed of her right to give evidence in her defence under oath or without taking oath. She is at liberty to call witnesses to testify in her defence.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 25TH JULY 2024.

S. N. MUTUKU

JUDGE

