

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 21 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL KIPTALAM KANDAGOR.....ACCUSED

RULING

The accused herein, one *DANIEL KIPTALAM KENDAGOR* is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on 14th day of February 2013, at Chepkosom village, Keiyo Metkei Division, Keiyo South District of Rift Valley province, the accused murdered *Eunice Chemaiyo Kibor*.

The prosecution case is that on 11th February, 2013 at 9.30 a.m, PW-1 in this case decided to go and visit the deceased who is her cousin. She proceeded to the deceased's house and found the door shut back. She entered into the house and found clothes all over in the sitting room. She moved out and went to the kitchen area. The kitchen door could not open. She noted presence of dry blood next to the door. She decided to call the area Assistant chief, the PW-2 in this case. This was at about 9.40 a.m. PW-1 told PW-2 that *Mama Eunice* had been killed. PW-2 decided to go and confirm the report. When she arrived she found everything in the sitting room scattered all over. There was a big crowd. She was told the body was in the kitchen. She went to the kitchen and saw blood on the floor. She pushed the door open using a stick. Inside she saw a body covered with a blanket, on the floor. Only a hand, which was full of mud, and hair was visible. She called the senior chief, one *Joseph Cheboi* and asked him to call the OCS. The police got to the scene and uncovered the body. PW-2 recognized it to be of *Eunice*. Her neck had been cut at the front. The police took away the body.

On 15th February, 2013 PW-4 identified the body at Moi Teaching and Referral Hospital, for post mortem. The post mortem was carried out by PW-5 who noted that she died out of the cut wound in the neck.

PW-6 availed in court a panga allegedly recovered at the scene by the previous investigating officer in the case. The prosecution then closed their case.

It is now upon this court to determine as to whether a prima facie case is established by the prosecution, warranting the accused be placed on his defence.

The prosecution evidence shows the deceased died out of a cut wound in the neck. However, there is no evidence at all as to who caused the said neck cut wound, when and why. There is no evidence at all connecting the accused to the said offence. For the reason I do find that a prima facie case is not established by the prosecution against him and is accordingly acquitted of the offence under *Section 210* of the *Criminal Procedure Code*.

He is set free forthwith unless otherwise lawfully held.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 3rd day of April, 2019.

In the presence of:-

- (1) Mr. Ondiek holding brief for Mr. Miyienda for the accused
- (2) Mumu for state /prosecutor
- (3) Mr. Mwelem- Court Assistant