

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 52 OF 2012

REPUBLIC.....APPELLANT

VERSUS

JOYCE KAVURA KIGAME.....RESPONDENT

RULING

JOYCE KAVURA KIGAME is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of the offence are that on the night of 4th July and 5th July 2012 at Milimani village, Simokwo location in Likuyani District within Western province, the accused jointly with others murdered *Evans Khisia Kigame*.

Initially the accused herein had been charged together with another, who was the first accused person, by the name of *Japheth Kigame Mabale*, who died later in the process of the trial, on 14th November, 2013.

This is a trial which has gone through many turns and twists since the date the suspects were first arraigned in court on 9th July, 2012. The plea was taken by *Justice Mshilah* on 23rd July, 2012. The first three witnesses were heard by *Justice F. Azangalala* on 7th November, 2012. From then the matter experienced a lot of problems ranging from failure of the accused Advocate to attend trial, accused who were on bond at times not attending, uncertainty on whether the charge was deserved given that the investigating officer had recommended an Inquest rather than a trial, and the attempt by parties to save the situation by diverting to plea-bargaining. During this period the matter was handled by several other judges who are *Ngenye, Kimondo, Ogembo, Omondi* and now myself. After the three witnesses had been heard, directions were taken that it be heard De-Novo. *Justice Ogembo* on 20th March 2018 heard one witness, *Salome Kayanza*. On 19th June, 2018 it was mentioned before *Justice Hellen Omondi* who ordered or gave directions that it should proceed from the point reached. Prosecution were not able to call any other witness and on 25th April 2019 they closed their case.

The available evidence is to the effect that PW-1 was a village elder at Matunda Market on 5th July 2012 at about 8.00 a.m. She was at home when she was called by police at Matunda police station. When she got there she found *Japheth Kigame* under arrest. He was a son to her eldest brother-in-law. He told her that he was at home on the evening of 5th July 2012 when Evans (his grandchild) appeared and demanded his late father's parcel of land. He told him that they should discuss the issue the following day. Evans then picked a panga and aimed to cut *Japheth*. *Japheth* took a piece of timber and hit Evans, who fell down. At about 8.00 p.m he died. PW-1 then identified the body for post mortem on 9th July, 2012 at Kitale District Hospital. The body had a broken right hand, and a cut on the head and stomach. The now accused herein, *Joice Kigame*, is a daughter of *Japheth*, initially her co-accused person, who is now deceased.

The foregoing evidence is based on hearsay as PW-1 informed the court what she was allegedly told by *Japheth Kigame* who was an accused person and who is now deceased. The said "evidence" alleges it is *Japheth Kigame* who killed the victim in self defence. The "evidence" does not touch at all on the accused, one *Joice Kavura Kigame*. Even if it was, it is hearsay which is not admissible as evidence. The cause of death was even not established as the evidence on post mortem and the report made was not offered and produced. As such there is not even an iota of evidence which connects the accused with the offence. A prima facie case is not established against her, and is accordingly acquitted of the offence under *Section 210* of the *Criminal Procedure Code*.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 6th day of June 2019.

In the presence of:-

(1) Ms Cheptoo holding brief for Mr. Otieno for the accused

(2) Ms Kagali for state prosecutor

(3) Ms Sarah - Court clerk