



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO. 143 OF 2012**

**R - VS - DORIS NYANDOKO MAOBI (ACCUSED)**

**RULING**

1. The accused Doris Nyanduko Maobi faces a charge with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that, 'On the 18<sup>th</sup> day of November, 2012 at [particulars withheld] village [particulars withheld] sub-location, Nyanguru location in Marani District within Kisii County murdered H K O. The accused denied the charge and the matter was heard. The prosecution called 5 witnesses.
2. Pw1 T testified that he knows the accused she is his neighbour. On the 17/11/2012 the deceased his sister had gone to visit the aunty M. On the 18/11/2012 he received a call from one Mwangi that his sister had died. He went up to the place where the body along a path next to the home of a certain lady. The deceased's private parts had blood, there were gloves and a handkerchief next to the body. He was told by Rodgers Ondieki that the deceased was seen passing the previous day in the company of another girl. He later on identified the body of the deceased at Ram hospital on th19/11/ 2012 before the post mortem was done.
3. Pw2 O M testified that he got a call from a village elder called Wilfred that the body of H K O was on a foot path. He went to the scene and confirmed the same. He knew the deceased she was a school girl. He reported the death to Nyakoe police base and police collected the body and took it to a mortuary. The body had no visible injuries.
4. Pw3 A G O testified that on the 17/11/12 she was home when a girl called N passed by their home and left with the deceased H who is her daughter. H used to sleep in the kitchen. At about 7am on the 19<sup>th</sup> she heard screams, she went to the place where the screams were coming from and she found the deceased on the ground dead. She sought to find out if her daughter was pregnant. She knows the accused as the wife of Mokabi. In cross examination she stated she did not know how the accused was involved in the death of her daughter.
5. Pw5 Rebecca Kemunto Nyariki testified that she is a village elder, that on the 19/11/12 she found a body lying on the road besides her body. She called out and the person did not respond. She screamed and people went to the scene. She knew the deceased she was a girl from a village close by.
6. Pw5 Doctor Samuel Onchere testified that on the 20/11/12 doctor Dennis Oeri did a post mortem on the body of H K. He found blood on the perineal area. There was no physical signs of trauma. In the genitio-urinary system there was bulky huge uterus with products of conception. The cause of death was cardiopulmonary arrest secondary to severe haemorrhage in clandestine abortion. He produced the post mortem report on behalf of Doctor Dennis Oeri.
7. The prosecution failed to call other witnesses and closed their case after the evidence of the 5 witnesses. At the close of the prosecution case this court is to make a determination on whether the accused has a case to answer to warrant her being put on her defence. Upon evaluating the evidence it has been established that H K died on the 18<sup>th</sup> November 2012. There was evidence by her mother that the deceased left with a girl friend called N who was not called to give evidence on where she went with the deceased. The only evidence against the accused is that she is neighbour. There was no evidence adduced to show her involvement in the deceased's death. The witnesses who testified did not witness the murder nor did they see the accused commit it. It's stated that the cause of death was a clandestine abortion. Did the accused help in procuring the said abortion? There was no evidence adduced that she did. There was no evidence adduced to show she was even a suspect. In the case of **R. vs. Wachira [1975] E.A.262**, it was held that if a prima facie case is not established at the close of the prosecution case then the court must acquit the accused person. I find that the evidence adduced is insufficient to call upon the accused to answer to the charge of murder. The prosecution has failed to establish a prima facie against Doris Nyandoko Maobi. She is acquitted of the charge of murder, she is free to go unless lawfully held.
8. Dated signed and delivered at Kisii on the 20<sup>th</sup> day of **November 2018**.

**R.E OUGO**

**JUDGE**

**In the presence of;**

**Accused**

**Present**

**Mr. Nyangacha h/b Mr. Gichana**

**For Accused**

**Mr. Otieno**

**For the State**

**Rael**

**Court/ clerk**