



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 93 OF 2011

REPUBLIC PROSECUTOR

VERSUS

EUNICE MUMBI KARUA ACCUSED

RULING

The accused **EUNICE MUMBI KARUA** has been charged with the offence of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that:

“On the 26th day of December, 2011 at Tulaga Village in Nyandarua County murdered GABRIEL NGUNJIRI MUIGAI”.

The accused pleaded ‘**Not Guilty**’ to the charge. Her trial commenced on 12/5/2014 and the prosecution called a total of three (3) witnesses in support of their case.

PW1 MARKO KAMAU MUIGAI is a brother to the deceased. He told the court that on 25/12/2011 (Christmas Day) his brother (the deceased) came to visit him in his home. The deceased was accompanied by three of his friends and his wife (the accused). During the visit the accused and deceased got involved in a quarrel. The quarrel led to a fight and the accused picked up a piece of wood and hit the deceased on the fore-head. Later on the couple left and went back to their home.

The next day 26/12/2011 **PW1** was called to go to the deceased’s house. He found deceased unwell and took him to hospital where upon arrival the deceased was declared dead. The matter was reported to police. The accused was later arrested and charged.

At the close of the prosecution case this court must examine the evidence on record with a view to determining whether a ‘**prima facie**’ case had been established to warrant calling upon the accused to defend herself. The definition of what constitutes a prima facie case was given in the often cited case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] E.A 331** where it was held as follows:

“It may not be easy to define what is meant by a ‘prima facie’ case but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”

In any murder trial it is crucial that both the fact as well as the cause of death of the deceased are proved beyond reasonable doubt. In this case fact of death has been proved. **PW1, PW2 DAVID KANYUA** and

PW3 JOHN MWAURA KAMAU who were all closely related to the deceased told the court that on 26/12/2011 the deceased was ill and was rushed to hospital. He was however declared dead upon arrival. All three witnesses who knew the deceased well identify him as '**Gabriel Ngunjiri Muigai**'.

Evidence regarding the **cause** of death is ordinarily by way of a post mortem report. In this case the doctor who performed the autopsy on the body of the deceased was not called to testify. Neither was the post-mortem report produced in court as an exhibit. In the case of **CHENGO NICKSON KALAMA Vs REPUBLIC [2013]eKLR** the Court of Appeal sitting in Malindi held that

“The position then appears to be that save in very exceptional circumstances stated above, it is absolutely necessary that death and the cause thereof be proved beyond reasonable doubt and that can only be achieved by production of medical evidence and in particular, a post-mortem examination report of the deceased.....”

From this authority it is clear that save in very exceptional circumstances failure to avail medical evidence to prove the cause of death will be fatal to the prosecution's case.

In this case no such exceptional circumstances exist. Despite several adjournments granted the prosecution failed to avail the doctor as a witness. The cause of death of the deceased therefore remains unproven.

It is suggested that the blow to his head by the accused led to the death of deceased. However according to **PW1** this incident occurred on 25/12/2016. **PW1** stated that he asked the deceased if he was hurt but the deceased denied. He went home and slept. The deceased died the following day on 26/12/2011.

The court cannot rule out the possibility that some intervening factor could have led to the deceased's death. It is only expert medical evidence that can establish with certainty that the blow to the head caused the death. I find therefore that in the absence of proof of cause of death no prima facie case had been established. I enter a verdict of '**Not Guilty**' and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless otherwise lawfully held.

Dated in Nakuru this 27th day of January 2017.

Maureen A. Odero

Judge

27/1/2017