



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 21 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

IRENE CHEBET KORIR.....ACCUSED

RULING

The accused **IRENE CHEBET KORIR** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that:

“On the 27th day of March, 2017 at Sigotik Farm in Njoro District within Nakuru County murdered NICKSON KIPLANGAT KANGOO”.

The accused entered a plea of ‘**Not Guilty**’ to the charge and her trial commenced on 26/5/2014 before **Hon. Lady Justice A. Mshila**. The Honourable Judge took the evidence of the first three (3) witnesses before she was transferred to the Nyeri High Court. I then took over the case and heard two (2) more witnesses. A total of five (5) witnesses testified for the prosecution .

The brief facts of the case were that the accused and deceased cohabited as man and wife in Sigotik Village. **PW1 GRACE KEITANY** the mother of the accused told the court that on the night of 27/3/2012 at 8.00pm the accused who was her daughter came to her house at night nursing a broken arm. The accused informed **PW1** that she and her husband had fought. Later the same night at about 5.00pm police came and arrested the accused from her mother’s house. **PW1** was informed that the deceased had died.

PW4 WILLIAM KIPTUI told the court that he was a neighbour to the couple. On 27/3/2012 at about 8.00pm **PW4** heard shouts and a commotion from the house which the couple shared. **PW4** went out to check what the problem was. He found accused and her mother **PW1** standing there. The accused was carrying a bag containing her clothes. The two walked away from the house and went to the home of **PW1**.

PW4 entered the house of deceased to check on the deceased. He found the deceased lying with his foot inside the fire bleeding profusely from cut wounds to his head and face. Inside the house **PW4** saw a blood stained panga and knife. **PW4** called other neighbours and they hired a vehicle to rush deceased to PGH – Nakuru. However the deceased was declared dead upon arrival at the hospital. The matter was reported to police who commenced investigations. The accused was eventually charged with this offence of murder.

The prosecution having closed its case this court must now analyse the evidence on record with a view to determining whether the prosecution have established a *prima facie* case sufficient to warrant calling upon the accused to defend herself.

The definition of a '*prima facie*' case was given in the celebrated case of RAMANLAL T. BHATT Vs REPUBLIC 1957 E.A LR where the court held as follows:

“It may not be easy to determine what is meant by a ‘prima facie’ case but at the very 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 this case the fact of the death of the deceased is not in any doubt. PW4 narrated to the court how he found the deceased lying barely conscious in his house bleeding from severe cuts to his head. PW3 ISMAEL KIPKURUI KABIER and PW2 GILBERT VINCENT ROTICH, both confirm having seen the deceased lying bleeding in his house. They attempted to rush the deceased to hospital but it was too late. The deceased was declared dead upon arrival at the hospital. PW1 the mother of the accused concedes to the fact of the deceased's death. All four (4) witnesses who knew the deceased well identify him as '**Nickson Kiplangat**'.

Having so proved the fact of death the prosecution is under an obligation to tender proof of the cause of that death. Proof of the cause of death is normally by way of the evidence of a pathologist who conducted an autopsy on the body and by the production of a post-mortem report. In NDUNG’U Vs REPUBLIC [1985] KLR 487 the court held

“Though there are cases in which death can be established without medical evidence relating to its cause as where there are obvious and grave injuries, medical evidence should still be adduced in such cases of the effect of such injuries as opinion expert evidence and as evidence supporting the cause of death alleged by the prosecution”.

In other words even in cases where there is testimony to the effect that the deceased suffered serious and grave injuries the prosecution is still under an obligation to call evidence to prove the effect of such injuries on the mortality of the deceased. This flows from the duty placed on the prosecution to prove each element (ingredient) of the charge beyond reasonable doubt.

In the more recent case of CHENGO NICKSON KALAMA Vs REPUBLIC [2015]eKLR, the Court of Appeal sitting in Malindi held as follows:-

“..... The position then appears to be that save in very exceptional cases 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. To the extent that the same was not done in this case, though available, death and its cause was therefore not proved beyond reasonable doubt.....”

In this present case the hearing commenced in May 2014 the prosecution eventually closed its case in May, 2015 without calling onto the stand the pathologist who conducted the autopsy on the body of the deceased and without producing as an exhibit a post-mortem report. There was no suggestion of any particular difficulty in availing this crucial witness. As such the cause of the death of the deceased remains unproven. Failure to adduce evidence on the cause of death is a fatal omission in a murder charge.

Therefore notwithstanding the weight of any other available evidence the charge of murder remains unproved. If the accused elected to keep silent in her defence, the evidence on record would not be sufficient to support her conviction.

I therefore find that the prosecution have failed to prove a '*prima facie*' case. 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 she is otherwise lawfully held.

Dated and delivered in Nakuru this 21st day of July, 2017.

Mr. Terer holding brief for Ms Kerubo

Mr. Chigiti for DPP

Maureen A. Odero

Judge