



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 82 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

ISAAC KIRANGA NAICHUKI.....ACCUSED

RULING

The accused **ISAAC KIRANGA NAICHUKI** 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 7th day of November, 2011 at Gatero sub-location in Laikipia County murdered MECHALINE MUMBI KIRANGA”

The accused was first arraigned in court on 11th November, 2011 and pleaded ‘**Not Guilty**’ to the charge. His trial commenced on 11/2/012. The prosecution only called one (1) witness in this case. **PW1 JOSEPH MUTINI KIRANGA** told the court that the accused was his nephew whilst the deceased was his niece. On 7/11/2011 at around 9.00pm his sister called ‘**Naomi**’ called to inform **PW1** that her daughter ‘**Mechaline Mumbi**’ was missing. A search was launched for the deceased.

Later at 11.00pm **PW1** received a call informing him that a window to his brother’s house had been broken into. **PW1** went there and together with police and other began to search the surrounding area. They recovered the body of the deceased lying in a maize plantation covered with napier grass and a rope around her neck. Accused who was suspected to have killed the deceased was arrested and taken to the police station.

This is a case in which from 2011 to date only one witness was ever called to testify. The delays in hearing cannot be blamed entirely upon the prosecution. On several occasions the defence counsel were not ready to proceed. Ultimately the court gave the prosecution three final chances to avail witnesses.

On each of the three dates 2/3/2016, 23/6/2016 and 30/6/2016 defence counsel was present in court ready to proceed. On each of the 3 dates no prosecution witnesses was availed. The case was eventually closed.

There was not even a pretence at a prosecution here. No evidence to show the cause of death of the deceased was adduced. No doctor testified and no post-mortem report was produced. The court has no idea how the deceased met her death.

There was no eye-witnesses to the incident **PW1** could shed no light on events leading to the death of the deceased. The accused was suspected because the window to deceased's house had been broken and he was said to have a fresh cut. **PW1** stated in cross-examination that

“..... It was realized that Isaac had a fresh cut so that is when people began saying Isaac was the culprit. Personally I did not see the cut on Isaac”.

Thus there was no proof that accused even had a fresh cut given that **PW1** the only witness called never saw it. **PW1** goes on to state

“I did not see accused killing my niece but there were rumours that he was the culprit”

Rumours do not amount to evidence. It appears that accused was arrested on the basis of suspicion which suspicion had no basis at all other than rumors.

I find that no prima facie case has been established. I enter a verdict of **‘Not Guilty’** and I acquit the accused of this charge of murder. He is to be set at liberty unless otherwise lawfully held.

Dated this 17th day of July, 2016.

Ms Kipruto holding brief for Mr. Magata

Mr Chirchir for State

Maureen Odera

Judge