

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 104 OF 2008

REPUBLICRESPONDENT

VERSUS

PHILIP NDUNGU KARIUKIACCUSED

RULING

The accused herein **PHILIP NDUNGU KARIUKI** was 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 10th day of October, 2008 at Nandarasi Village Ndunyu Njeru Location in Nyandarua South District within Central Province murdered THERESIA MAGIRI”.

Although the accused was first arraigned in court in October, 2008 this trial has never taken off for a variety of reasons which cannot be entirely blamed upon the prosecution.

Firstly the accused who was assessed and found to be suffering from Schizophrenia a psychotic disorder was found unfit to plead and was placed under treatment at Mathari Hospital for a period of time. Given his mental state the trial could obviously not proceed.

In the meantime a plea – bargain agreement was being negotiated. This was eventually agreed upon and on 17/10/2012 the accused was charged with the lesser offence of **MANSLAUGHTER CONTRARY TO SECTION 201 OF THE PENAL CODE**. The accused pleaded guilty to that charge but when the facts were read out he changed his plea to one of ‘**Not Guilty**’.

The parties went back to the drawing board and the prosecution intimated that they would pursue the original charge of murder.

On several dates listed for hearing the matter did not proceed either due to unavailability of counsel or due to unavailability of witnesses.

On 27/9/2016 a full eight (8) years after the case commenced the court gave a last adjournment. On 16/10/2016 the prosecutor informed the court that the witnesses had relocated and could not be traced. Thus the prosecution eventually closed its case without the evidence of a single witness.

The accused has been in custody for 8 years. The witnesses cannot be traced and even if they were available much time has passed and memories are certain to have faded. No prima facie case has been made out. I enter a verdict of ‘**Not Guilty**’ and I hereby acquit the accused of this charge of murder. The accused is to be at liberty forthwith unless he is otherwise lawfully held.

Dated in Nakuru this 7th day of November, 2016.

Mr. Mongeri holding brief for Akango.

Maureen A. Otero

Judge

7/11/2016