

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CRIMINAL CASE NO. 94 OF 2014

(FORMERLY OF KISII HCCRC NO. 56 OF 2014)

BETWEEN

REPUBLIC PROSECUTOR

AND

V O N ALIAS J O ACCUSED

R U L I N G

1. On 20th March 2012, S O (PW 2) came home from school to take lunch with his grandmother B A M. He was staying with her. When he arrived, he found her lying on the floor with a knife protruding from the area below her armpit. She was dead.
2. He quickly rushed to inform his relatives. He informed M A O (PW 1), C O N (PW 4) and L A (PW 5). They all rushed to the scene and confirmed that B had been stabbed. PW 4 called the Assistant Chief who in turn called Police Officers from Nyatike Police Station. The Officers came and took the body to St. Camillus Hospital Mortuary, Karungu. Erastus Otieno Nyatibo (PW 3) confirmed that a postmortem was done after a few days and he noted that the deceased sustained a stab wound on her left breast side.
3. The prosecution case is that the accused, V O N, murdered the deceased and this Court was informed accordingly on 20th May 2014. He pleaded not guilty to the information. The prosecution case was that there was circumstantial evidence that the accused who had been away from home for a long time had been seen in the vicinity of the deceased home on that day and he is the only one who could have committed the offence.
4. PW 2, PW 4 and PW 5 were clear in their testimony that they had not seen him on that day. They knew him as a grandchild of the deceased. The only material witness was PW 1, his stepmother, who stated that the accused came to see her on the material day. They talked about his waiting card and she left to go and see B since it was lunch time. She was with B, made for her porridge and left. On her way back she saw the accused pass her and go into the bushes.
5. She stated that she had walked for a distance before seeing the accused. She estimated that the distance between her home and B 's was about 1 kilometer. This evidence is insufficient to implicate the accused in the murder of the deceased. The accused was seen far from the deceased's home and anyone else could have killed the deceased. No one put his at the deceased's place immediately before or immediately after the time the deceased is said to have died. Furthermore, no motive was established to at least point to the accused. I also looked at the demeanor of PW 1 and I found her evidence to be evasive, unsure and unreliable. Lastly, PW 2, PW4 and PW 5 stated that it was not strange for the accused to be away from home for long periods of time.
6. There is insufficient evidence to put the accused on his defence. This case must fail and I must record, in accordance with **section 306(1)** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)***, a finding of not guilty. The accused is acquitted and is set free unless otherwise

lawfully held

DATED and DELIVERED in MIGORI this 16th day of July 2015.

D.S. MAJANJA

JUDGE

Mr Odera instructed by Odera and Odhiambo and Company Advocates for the accused.

Ms Owenga, Principal Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State