



**Republic v Kingiri alias Kobu & another (Criminal Case 59 of 2018) [2024] KEHC 2064 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2064 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 59 OF 2018  
JN KAMAU, J  
FEBRUARY 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MATAYO MMBWANGA KINGIRI ALIAS KOBU ..... 1<sup>ST</sup> ACCUSED**

**KENNEDY AYIGA ISUMBA ALIAS KEVO ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. This matter was partly heard by Njagi J. This court became seized of the same on 17<sup>th</sup> April 2023. On the said date, the parties herein asked it to proceed from where the matter had reached.
2. On 30<sup>th</sup> January 2024, the 1<sup>st</sup> Accused person applied to withdraw from further hearing of the case on the ground that he wished to plea bargain. This court allowed his application and listed the Plea Bargain Proceedings for 29<sup>th</sup> February 2024. The hearing then proceeded against the 2<sup>nd</sup> Accused person only. The Prosecution closed its case after calling a total of six (6) Prosecution witnesses.
3. The Prosecution and the 2<sup>nd</sup> Accused person did not file any Written Submissions on the question of whether or not the 2<sup>nd</sup> Accused person had a case to answer. They both relied on the evidence that had been adduced by the Prosecution witnesses.
4. A perusal of the proceedings showed that out of the six (6) Prosecution witnesses who testified, it was only Alfred Mosori (hereinafter referred to as “PW 2”) who saw the 2<sup>nd</sup> Accused person at the home of Abraham Kimanani (hereinafter referred to as “PW 1”) on the material date of 13<sup>th</sup> July 2018. PW 1 was the brother to Cynthia Kageha (hereinafter referred to as “the deceased”).
5. PW 2’s evidence was that he saw the 2<sup>nd</sup> Accused person having sex with the deceased who was lying in the field in the compound. At the time, she was very drunk and had no idea what was going on. His testimony was that the 2<sup>nd</sup> Accused person ran away as soon as he saw him.



6. PW 1 admitted that the 2<sup>nd</sup> Accused person was not present when the 1<sup>st</sup> Accused person was beating the deceased or when he went back to his home on the evening of the material date. On his part, No 86488 PC Joshua Mwanja (hereinafter referred to as “PW 6”), the Investigating Officer also confirmed that the 2<sup>nd</sup> Accused left the deceased alive.
7. Thomas Nderesi (hereinafter referred to as “PW 3”) was a watchman. On returning home from a Matanga and stumbling on the deceased lying on the floor of his house, PW 1 went and called him to go with him to confirm if the deceased was dead. Christopher Oriedo (hereinafter referred to as “PW 5”) was the Area Assistant Chief. PW 1 accompanied by PW 3 and another watchman called Masai went and reported the incident to him, he then reported the incident to the Chief of the area who in turn called the police.
8. On his part, Dr Collins Masika (hereinafter referred to as “PW 4”) produced the Postmortem Report dated 18<sup>th</sup> July 2018 indicating that the deceased died of haemorrhagic shock secondary to excessive haemorrhage by the vagina.
9. Notably, no Prosecution witness tendered evidence placing the 2<sup>nd</sup> Accused person at the scene of crime on the material night of 13<sup>th</sup> July 2018. After he allegedly saw PW 2 and he ran away, no one saw him again at PW 1’s home. The Prosecution did not adduce any evidence that pointed to the 2<sup>nd</sup> Accused person as having been the person who caused her death.
10. As there was absolutely nothing on record that connected the 2<sup>nd</sup> Accused person to the deceased’s death, this court came to the firm conclusion that the Prosecution did not establish a prima facie case against him warranting him to be put on his defence.

### **Disposition**

11. For the foregoing reasons, it is hereby directed that the 2<sup>nd</sup> Accused person be and is hereby acquitted of the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya) pursuant to Section 210 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
12. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024**

**J. KAMAU**

**JUDGE**

