



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**HIGH COURT CRIMINAL CASE NO. 27 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ANN MWENDE MULWA.....ACCUSED**

**R U L I N G**

1. **Ann Mwendu Mulwa**, the accused herein, is charged with offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that between 13<sup>th</sup> November 2016 and 20<sup>th</sup> November, 2016 at unknown time at [particulars withheld] Village, Kyanika Location within Kitui County, the accused murdered an infant known as FK (herein after, to be referred to as the deceased for ease of reference).

2. The accused denied committing the offence and the prosecution has presented seven witnesses to prove their case. Upon closing their case this court is being called upon to rule whether the prosecution has established their case sufficient enough to place the accused on her defence as stipulated under the Provisions of Section 211 of Criminal Procedure Code.

3. In her written submissions done through her Counsel, the Accused person submits, the murder charge against her is baseless because no one saw her strangle her baby. She further opines that no one identified the body found to be of FK and as such she argues that the body could as well be of another person. She claims that her daughter could be alive but does not state where the child is. She submits that the circumstantial evidence against her is weak and that the doctrine of "last seen" as illustrated in the case of **ANJAN KUMAR SARMA – VS- STATE OF ASSAM** (Citation not provided) could not be a basis to convict her. She relies on the following authorities to buttress her contention;

**a. Joan Chebii Sawe –vs-Republic (2003) eKLR**

**b. Republic –vs- Daniel Musyoka Muasya & 2 Others (2014) eKLR and**

**c. Musili Tulo –vs-Republic 2014 (2014) eKLR**

This court has considered the authorities cited by the defence which all relates to when a court can or not rely on circumstantial evidence. This court notes that the prosecution in this case is indeed relying on circumstantial evidence. At this stage however, the standard of prove applicable is on a prima facie basis.

This court is required to weigh the evidence on a prima facie basis and determine if a case has been made out sufficient enough to require an accused person answer to it or be placed on his defence.

4. This court has considered the evidence tendered by the seven witnesses and applying the applicable legal threshold pursuant to **Section 211** of the Criminal Procedure Code and without delving much into details for obvious reasons (not to prejudice any party in this proceedings). This court is satisfied that the prosecution has established a case against the accused person herein sufficient enough to place her on her defence. She has a case to answer.

The provisions of Section 211 of the Criminal Procedure Code shall be explained to the accused person.

**Dated, Signed and Delivered at Kitui this 22<sup>nd</sup> day of February, 2021.**

**HON. JUSTICE R. K. LIMO**

**JUDGE**