



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL CASE NO. 32 OF 2011**

**REPUBLIC**

**VERSUS**

**JANE WANJIKU MUTAHI.....1<sup>ST</sup> ACCUSED**

**LYDIAH NJOKI MUTAHI.....2<sup>ND</sup> ACCUSED**

**SHEM KIAMA MUTAHI.....3<sup>RD</sup> ACCUSED**

**RULING**

1. The accused persons were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; they were accused of having jointly murdered John Maina Mutahi on the 20<sup>th</sup> day of October, 2011 at Gathiru Village in Nyeri County;
2. The accused persons entered a plea of Not Guilty; at the hearing hereof the accused persons were at all times represented by Learned Counsel Mr Maru Macharia whereas Mr. Ondimu was the Prosecuting Counsel for the State;
3. The case was partially heard by Wakiaga J who heard one (1) prosecution witness; a total of nine (9) witnesses were called to buttress the prosecution's case and at the close of the prosecution case defence counsel was invited to make submissions as to whether the prosecution had made out a case that required the accused persons to be called upon to defend themselves;
4. Prosecuting Counsel made oral submissions and submitted that the evidence adduced by the prosecution on the events leading to the discovery of material facts namely the locations where the deceased's body and his cell phone were found calls for an explanation and it was imperative that the accused be called to explain their side of the story; the evidence also places them as having committed the offence; for those reasons counsel submitted that a prima facie case had been made out against them and this warranted placing them on their defence;
5. The defence counsel filed and served written submissions on behalf of the accused persons in which he submitted that the charge preferred against the accused persons was fabricated and was built on hearsay evidence; as such the prosecution had failed to produce evidence that identified the accused persons as the persons who did the unlawful act that resulted in the death of the deceased and had therefore failed to establish a prima facie case against them; that a finding of Not Guilty ought to be entered and the case against the accused persons be dismissed;
6. After having evaluated all the evidence on record it is this court's finding that the evidence adduced by the Investigating Officer was based on how the 1<sup>st</sup> accused led him to the discovery of the location of the deceased body; there was also the evidence of **PW3, PW5, PW6** and **PW7** on how the cell phone linked to the deceased was found and retrieved; the prosecution may be relying on circumstantial evidence but the events leading to the discovery of the body and the cell phone raises a scintilla of evidence that the accused persons may have been involved in the commission of the offence as they were the last persons seen with the deceased; the accused persons have a responsibility to tell this court what took place on that fateful date and it is therefore imperative that they be called to explain their side of the story;
7. For those reasons this court is satisfied that the prosecution has established a prima facie case against the accused persons that warrants them being placed on their defence to answer to the charge; case law relied on **Bhatt vs Republic (1957)**;
8. This court finds that the accused persons have a case to answer; their rights and options will be put to them for election before they present their defence.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 22<sup>ND</sup> DAY OF APRIL, 2021.**

**HON. A. MSHILA**

**JUDGE**