

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 5 OF 2019

REPUBLIC

VERSUS

PAUL MUGO MUTAHI.....ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; he was accused of having murdered his son JMM on the 11th day of February, 2019 at Kiaganda Village within Nyeri County;
2. The accused entered a plea of Not Guilty and at the hearing he was at all times represented by Learned Counsel Mr. Gori whereas Ms. Gicheha and Mr Ondimu were the Prosecuting Counsels for the State;
3. A total of six (6) prosecution witnesses were called in support of the prosecution's case; at the close of its case both counsel's were invited to make submissions on whether the prosecution had made out a case that would necessitate the accused to be called upon to defend himself;
4. Both counsels filed and exchanged written submissions; in their submissions prosecuting counsel stated that it had adduced sufficient evidence that pointed to a deliberate act carried out by the accused that inflicted grievous injuries to **PW1** and fatal injuries to his son of nine (9) months; there was evidence on record to prove the three (3) essential elements of the offence of murder and there were no other co-existing circumstances that could displace the accused's participation;
5. Taking into account all the evidence on record and the circumstances of the case the prosecution had discharged its burden and the evidence tendered had not been discredited in cross-examination; therefore, it had made out a prima facie case that warranted the accused to be placed on his defence;
6. Whereas the defence counsel submitted that the prosecution had failed to make out a prima facie case against the accused; that there was no evidence of a material ingredient of the offence and the evidence of prosecution's star witnesses **PW1** and **PW3** was incredible, threadbare and had serious gaps riddled with inconsistencies in its narrative and that crucial witnesses were never called; and therefore the threshold of a prima facie case had not been established against the accused;
7. Counsel urged the court to find him "Not Guilty" and the accused be acquitted and be set at liberty unless otherwise lawfully held.
8. After reading the written submissions and having evaluated the prosecution evidence on record it is this court's considered view that the testimonies of **PW1** and **PW3** on their narration of events leading to the unlawful death of **JMM** was reliable and was not discredited during cross-examination; there was strong evidence on the accused's active participation and there is need for him to offer an explanation to this court; for those reasons this court is satisfied that the prosecution has established a '*prima facie*' case against the accused that warrants him being placed on his defence to answer to the charge; reference is made to the renowned case of **Bhatt vs Republic (1957)**;
9. The accused is found to have a case to answer; his rights and options will be put to him for election before he presents his defence.

Orders Accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 22nd day of April, 2021.

HON. A. MSHILA

JUDGE