



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER 33 OF 2018

REPUBLIC.....PROSECUTION

VERSES

HILLARY MAURICE KIPRONO alias JUSTIN KIBOR.....ACCUSED

RULING

1. The accused person Hillary Maurice Kiprono alias Justin Kibor was charged with **Murder contrary to section 203 as read with section 204 of the Penal Code.**

2. It was alleged that on 12th February 2018 at Rafiki Area, Kambi ya Moto Location in Rongai within Nakuru County he murdered Joyce Wangari Gichera his estranged wife.

3. He took plea on 31st July 2018 and pleaded not guilty.

4. The trial ensued on 19th November 2019 with the prosecution summoning evidence of nine witnesses.

5. On 30th January 2020 the prosecution closed its case.

6. The Defence Counsel Mr. Opar sought to put in written submissions, and the prosecution through Ms. Wambui sought for time to respond. By the time of fixing a date for ruling, and several prosecution counsel later, following the transfer of Ms. Wambui, the state had not filed any submissions.

7. At this stage in the proceedings, the court is supposed to make a determination whether the prosecution has presented sufficient evidence to warrant the accused person to be put on his defence pursuant to the provisions of **Section 306 (2) of the Criminal Procedure Code.**

8. Murder is defined by **Section 203** of the **Penal Code** as follows;

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. To successfully end up with a verdict of murder the prosecution should prove that there is death of a victim, which was caused by an unlawful act or omission by the accused person and the unlawful act or omission was actuated by malice aforethought.”

9. In summary, the prosecution case is that the accused and the deceased were husband and wife and the parents to minors PW1 and PW2. The two testified to threats by their father to kill their mother. PW3, a niece to the deceased and the accused testified that the deceased told her about threats by the accused to kill her. She also testified that she witnessed the stabbing of the deceased to death by the accused.

10. Among the witnesses were the pathologist PW7, who conducted the postmortem report, confirmed to this court that the deceased had multiple stab wounds distributed in the gluteal region, buttocks, front of the chest, abdomen. He formed the opinion that the cause of death was as a result of the stab wounds.

11. **Section 306 (2)** of the **Criminal Procedure Code** provides:

“When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

12. The defence submitted that the prosecution did not place sufficient evidence before this Honourable Court as to warrant the accused person to be put on his defence. That there were inconsistencies and failures on the part of the prosecution.

13. It was the defence position that the prosecution failed to prove beyond reasonable doubt that it was the accused person who killed the deceased and urged this court to find that accused person has no case to answer and proceed to discharge him accordingly.

14. With regard to the determination whether an accused person has a case to answer or not, in the case of **May vs O'sullivan (1955)92 CLR 654** the **English court** stated as follows;

“when at the close of the case for the prosecution a submission is made that there is no case to answer, the question to be decided is not whether on the evidence as it stands the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted. This is really a question of law.”

15. Further, in **Republic vs Wachira (1975) EA 262** the court held that;

“it has been settled for many years that the sufficiency or otherwise of the evidence at close of prosecution case ,so as to require the an accused to make his defence thereto, is a matter of law, a court is only entitled to acquit at that stage if there is no evidence of a material ingredient of the offence or if the prosecution has been so discredited and the evidence of their witness is so incredible and untrustworthy that no reasonable tribunal, properly directing itself, could safely convict. Apart from these two situations, a tribunal should not in general be called upon to reach a decision to conviction or acquit until the whole of the evidence which either side wishes to tender has been placed before it. if, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at any stage convict or acquit, but on whether the evidence is such that a reasonable tribunal might convict on the evidence so far laid before it, there is case to answer” (emphasis mine)

16. The court was discouraged from giving reasons for its findings at this stage in the case of **Festo Wandera Mukando vs Republic (1980) KLR 103**, the court stated as follows;

“... We once draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” is rejected, the court should say no more than that it is. It is otherwise where the submissions is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned”

17. Based on the principles enunciated in the above cited cases I find that the prosecution has established a prima facie case to require the accused person to be placed on his defence.

DATED THIS 21ST MAY 2021.

DELIVERED VIA ZOOM THIS 26TH DAY OF MAY, 2021.

MUMBUA T MATHEKA

JUDGE

In the presence of:

For state Ms. Murunga

Mr. Opar for the accused

CA Edna

Accused