



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CRIMINAL CASE NO. 2 OF 2012**

**[FORMERLY NYERI HCCR NO. 14 OF 2010]**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JACKSON MWANGI WATHITHI.....ACCUSED**

**RULING**

1. The accused is charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The particulars are that on 8<sup>th</sup> April 2010 at Kamahuha Trading Centre in Murang'a South District, jointly with others not before court, he murdered *Margaret Wambui Kamau*.
3. He pleaded *not guilty*. The prosecution lined up *eight* witnesses.
4. I have paid close attention to the evidence of the key witnesses. For instance, PW1, PW2, PW3, PW4 and PW5 all went to the scene. PW1 and PW2 found the deceased's body on the floor next to a bed covered in heap of burning clothes. The accused's house, which was separate, was completely burnt down. PW4 said that the accused was employed as a farmhand by the deceased and that she had seen the accused in the compound the previous night.
5. There is then the evidence of the investigating officer (PW8) and exhibits numbered 2 to 6 including the Government Analyst Report and some cell-phone data retrieved from a service provider.
6. I have also considered the evidence of the pathologist (PW6) whose opinion was that the death was caused by asphyxiation "*due to smothering*". He testified that the deceased may also have been sexually assaulted. The burns were significant but not the cause of death.
7. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of *all the seven* witnesses, I find that the Republic has established a *prima facie* case against the accused.
8. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place the accused on his defence.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 27TH DAY OF JULY 2021.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of:**

The accused.

Mr. Waweru holding brief for Ms. Kimani for the accused.

Mr. S. Mutinda for the Republic.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.