



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL CASE NO. 21 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PATRICK NYAGA MUGO.....ACCUSED**

**RULING**

1. The accused person in this case was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that on the 29<sup>th</sup> day of March, 2018 at Kavari village in Manyatta sub-county within Embu County, murdered Lydia Wanja Nguru.
2. He pleaded not guilty to the charge and the case proceeded to full hearing. In support of the case, the prosecution called thirteen (13) witnesses and closed their case. Upon the close of the prosecution case the court directed parties to file submissions on no case to answer which counsel for the accused person filed but the prosecution indicated to the court that they shall rely on the evidence on record.
3. In his submissions filed on the 11<sup>th</sup> August, 2021, counsel for the accused has urged the court to find that the accused person has no case to answer and acquit him under Section 306 of the Criminal Procedure Code.
4. It was submitted that the prosecution did not prove that the cause of death was anything else other than the 110% burns and the charred remains in that though specimens were taken from the deceased's body for DNA and/or toxicological tests, PW1 was not notified of the results of such tests if they were ever done and none were presented in court as further evidence as exhibits. Further that PW13 was unable to collect substances at the scene for forensic analysis.
5. On the cause of fire, it was submitted that, the accused and the deceased were on the night of 28<sup>th</sup> /29<sup>th</sup> March 2018, the only two persons in their house that got burned and no evidence was adduced as to who between the two persons started the fire or even how the fire started. Further that the report by the fire expert (PW 4) having been prepared after a period of four (4) months from the date of the occurrence of the incident, it is not 100% reliable and the same was not conclusive and that he recommended further investigations to be done.
6. It was further submitted that no evidence was adduced as to any serious beating or grievous harm to the deceased by the accused person before the accused allegedly set the house on fire. That there is no evidence that the accused caused the unlawful act of arson or by any other action caused the fire that burned the deceased to death.
7. On how the accused person conducted himself at the scene and how he was dressed when the house was burning, it was submitted that the accused was at all times present when the neighbours struggled to put off the fire, he was confused and pacing up and down and he did not run away from the scene of the crime. Further that the prosecution did not prove that the circumstances of this case taken cumulatively should link the accused person with the death of the deceased who was his wife. That he was only suspected because he was the only person with the deceased on the night she died. He urged the court to find that no *prima facie* case has been established to warrant the accused to be put on his defence as doing otherwise, the court will be shifting the burden of proof to the accused to explain the circumstances under which the deceased died and to explain his innocence.
8. Section 306 of the Criminal Procedure Code obligates this court, upon the close of the prosecution's case, to make a ruling or a decision on whether the accused person has a case to answer or not. Under Section 306(1) where, after the close of prosecution's case, the court is of the opinion that there is no evidence that the accused or any one of the several accused committed the offence, the court should, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
9. On the other hand, Section 306(2) provides that where the court is of the opinion that there is evidence that the accused person or any one or more of several accused persons committed the offence, the court should proceed to put the accused to his/their defence and whereby the accused is supposed to present his evidence in defence.

10. In order to determine as to whether the accused has a case to answer or not, the court is obligated to consider the prosecution's evidence and make a determination as to whether the same presents a *prima facie* case that would warrant this court to call upon, the accused to give their defence. On what constitutes a *prima facie* case, see the case of **Ramanlal Tranbakkal Bhatt Vs R (1957) E.A. 332 at 334 and 335.**

11. What this court is required to satisfy itself at this moment and time is that a *prima facie* case has been made out against the accused person sufficient to put him on his defence. However, in determining whether the prosecution made a *prima facie* case against an accused person or persons, this court is only supposed to give reasons for its decision when it is acquitting the accused person at the close of the prosecution's case. Otherwise the court should say no more than that (the **Festo Wandera Mukando Vs Republic (1980) KLR 103.**

12. The court has considered the evidence tendered by the prosecution in the matter and the written submissions on behalf of the accused person. From the entirety of the evidence, it is my view that the prosecution has made up a *prima facie* case against the accused person. He has a case to answer and he should make his defence.

13. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF SEPTEMBER, 2021.**

**L. NJUGUNA**

**JUDGE**

.....*for the State*

.....*for the Respondent*