

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL CASE NO. 11 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

TABITHA CHEPKOECH.....ACCUSED

RULING

1. Tabitha Chepkoech (Accused) 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 were that on 5th day of May, 2019 at Kapkwen Market, within Bomet Central Sub-County murdered one Kevin Kiptoo Bett.

2. The prosecution called 7 witnesses whose testimony is now on record and is summarized as follows. PW1 the mother of the deceased was alerted by PW2 who was the deceased's friend that her son had been stabbed at the Accused's house and she rushed to pick him and take him to hospital. She requested PW3, mother to the deceased's uncle (motorcycle rider) to carry him. PW4 identified the body to the pathologist (PW6) who conducted the postmortem at Longisa County Referral hospital mortuary. PW6 formed the opinion that the cause of death was hemorrhage which led to the collapse of the heart secondary to assault. PW5 was the Government analyst who conducted forensic examination on the deceased's clothes and murder weapon. He opined that the DNA generated from the knife matched the DNA generated from the deceased's clothes. The Investigating Officer (PW7) wrapped up the testimonies of the witnesses and produced the exhibits.

3. At the close of the prosecution case, the prosecution submitted that the deceased had made a dying declaration and that the testimonies of PW1, PW2 and PW3 were corroborative and that the expert evidence also lend credence to the testimony of PW1, PW2 and PW3. The Prosecution submitted that it had established a *prima facie* case to warrant the Accused person being put on her defence.

4. The defence submitted that proof of death and cause thereof were not in dispute. They however submitted that the evidence did not establish a link between the Accused and the death of the deceased and neither had the prosecution witnesses linked the murder weapon to the Accused. They submitted that the prosecution had failed to establish a *prima facie* case against the Accused and that she should be acquitted at this stage.

5. I have considered the evidence already on record and the respective submissions of the party. The only issue in this ruling is whether or not a *prima facie* case has been established against the Accused.

6. A *prima facie* case has been defined as “....*one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.*” [See **Ramanlal Trambaklal Bhatt V. R (1957) E.A. 332 at P. 334-335**].

7. At this stage of the trial, I am not required to undertake a detailed analysis of the evidence [See **Republic Vs. Samuel Karanja Kiria (2009) eKLR**]. I have however considered all the evidence on record and the submissions of Counsel. It is my finding that the prosecution has established a *prima facie* case against the Accused. She has a case to answer and is called upon to elect her mode of defence in accordance with Section 306 of the Criminal Procedure Code.

8. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 24TH DAY OF NOVEMBER, 2021.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Mr. Kenduiwo holding brief for Defence Counsel Mr. Mugumya, Mr. Murithi for the DPP, and Kiprotich (Court Assistant).