



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER 17 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

ISAAC MWANGI WAMBUI.....ACCUSED

RULING

1. The accused person IMW faces the charge of **Murder contrary to section 203 as read with section 204 of the Penal Code**. It is alleged that on the 13th February, 2017 at Wanyororo “B” in Nakuru North Sub-County within Nakuru County, he murdered unnamed Child.

2. On 2nd March, 2017 the accused took plea and he pleaded not guilty. On 26th July, 2017, the trial started and prosecution called four (4) witnesses.

3. PW1, **DR. Titus Ngulungu**, who conducted the postmortem examination at Nakuru Municipal Mortuary on 21st February, 2017 established that the cause of death was asphyxia following head injury due to blunt force trauma in keeping with a violent shaking of the brain.

4. **PW2, James Thuo Njuguna, Mzee wa Nyumba Kumi**, testified that on 13th October, 2017 at 5.30 a.m. he was woken up by his neighbor one Becky Kwamboka about an incident at her home. In company of his wife and two neighbors, Priscilla Wahu & Nelson Ngugi they proceeded to Becky’s house where they found her two month’s old baby boy lying dead on the bed with blood oozing from his nose. He said they also found the accused person who was drunk in his house. Upon enquiry, Becky who is the wife to the accused, informed them that a quarrel ensued between them about naming of the child after which the accused person hit the child with his fist on the face. Together with his *Nyumba Kumi* colleague one Nelson Ngugi they arrested the couple and took them to Bahati Police Station.

5. **PW3, No 235324 Inspector Richard Mabwai** testified that on 13th February, 2017 at about noon while at station members of the public came and reported that the accused had killed his child. He visited the scene and found a six weeks old child lying dead on the bed with blood oozing from his nose. That the child was taken to the mortuary and he arrested the accused person after his wife Becky informed him that he is the one who had hit the child.

6. **PW4, No. 42223 PC Juma Kisera**, recalled on 13th February, 2017 at about 12.30 a.m murder report was made at their station. He stated that a perusal of the statement by the deceased’s mother indicated that she had an argument with the accused about naming of the child prior to the accused hitting the child. He then interrogated the accused person who was in the cells about the deceased’s death but the accused denied killing him and instead said that the child died as a result of pneumonia. He charged the accused person after receiving the postmortem results which revealed the cause of the child’s death with the offence before court. He did not charge the mother of the child because according to him she was not involved in the death of her child.

ISSUES FOR DETERMINATION

- ***Whether or not the prosecution has made out a prima facie case against the accused that would warrant this court to call upon the accused to give his defence.***

ANALYSIS & DETERMINATION

7. Counsel for the accused Mr. Miruka did not make nay submissions.

8. **Section 306 (1) and (2) of the Criminal Procedure Code** explains the procedure the court has to follow at the close of the prosecution case as follows;

“(1) When the case for the prosecution has been concluded, the court if it considers that there is no evidence that the accused or any of the accused committed the offence after hearing arguments by the advocate for the prosecution and defence may desire to submit, record a finding of not guilty.

(2) It is when the evidence of the witnesses has been concluded the court if it considers that there is evidence that the accused person or persons committed the offence shall inform each such accused person of his right to address the court either personally or by his advocate, by giving sworn or unsworn evidence and or call witnesses.”

9. **Section 306(1)** requires the court to consider the evidence before it to determine whether there is need to place the accused on his defence. The issue now is simply whether from the foregoing evidence, on its face there is a basis for calling upon the accused person to give his defence. I am alive to the fact that the court is discouraged from giving reasons for its findings at this stage in the as was stated in the case of **Festo Wandera Mukando vs Republic (1980) KLR 103,**

“...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.”

10. Hence I can only say that from the above overview of the evidence tendered by the prosecution witnesses that I am of the view there is a *prima facie* case against the accused person to warrant him being put on his defence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF DECEMBER, 2021.

Mumbua T Matheka

Judge

In the presence of:

CA Lepikas

Ms. Murunga for state

Accused present virtually

N/A for Mr. Miruka for accused