



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CRIMINAL CASE NO. 7 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NPS.....ACCUSED**

**RULING**

1. The issue before the court is whether the accused has a case to answer in respect of the murder of the deceased, DMS.
2. Ms. Saika, counsel for the accused has submitted that the accused has no case to answer in terms of section 306 (2) of the Criminal Procedure Code (Cap 75) LOK.
3. Ms. Torosi for the prosecution has left the matter to the court to decide.
4. Ms. Saika submitted that the accused, who is the husband of the GCS (Pw 4) used to have quarrels whenever he was drunk. On the material day they quarreled and the accused took a stick with which he struck Pw 4. As at that time Pw 4 was holding the deceased child in her arms. The deceased died before she would be taken for medical treatment. Ms Saika submitted that the since the deceased was drunk, he was not possessed of the necessary mens rea for murder.
5. Furthermore, counsel submitted that a submission of no case answer may properly be made and upheld citing *Sanyi Chattai v the State (1985) 39 WLR 925* in support of her submission.
6. Counsel therefore submitted that the prosecution evidence has been so discredited that no reasonable tribunal could properly convict. She therefore urged the court to acquit the accused.
7. The prosecution as I have pointed out opted not to file submissions.
8. I have considered the entire prosecution evidence and the submissions made in this court. I find that a court is only entitled to acquit an accused if the prosecution has not produced any evidence in support of the charge or that the said evidence is so discredited as to be unworthy of belief.
9. In the light of the evidence adduced and the applicable law I find that the prosecution has made out a case to answer against the accused.
10. The accused is hereby put on his defence.

**Ruling delivered in open court this 9<sup>th</sup> of March, 2020**

in the presence of Ms. Torosi for the Republic and Ms. Saika for the accused.

**J. M. Bwonwonga**

**Judge**

**9/3/2020**