



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 46 OF 2012

[FORMERLY NYERI HCCR 26 OF 2012]

REPUBLIC.....PROSECUTOR

VERSUS

TABITHA WAITHIRA IRUNGU.....1ST ACCUSED

PHILLIP KAMAU WACHIRA.....2ND ACCUSED

RULING

1. The two accused persons are charged with *murder* contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars are that on the 23rd July 2012 at Kanjahi village in Murang'a County, they murdered *Alice Wachera Chege*.
3. They both pleaded *not guilty*. The prosecution called *ten* witnesses. Learned counsel for the accused, *Mr. Kirubi*, filed submissions dated 11th January 2019. The court stamp must be *erroneous* because it reads *14th August 2018* long before the close of the prosecutions case.
4. Learned Prosecution Counsel, *Ms. Gichuru*, did *not* file submissions.
5. I have considered the submissions. There is both *direct* and *circumstantial* evidence surrounding the homicide. I have paid heed to the *material* evidence connecting the 2nd accused to the death of the deceased.
6. It is true that the 1st accused was in police custody on 23rd July 2012. But there were *suggestions* by some witnesses that the 1st accused delivered the deceased to some *four men* on 18th or 19th July 2012, some days before her death. The men were in a car; the destination was to be Kayole. The body of the deceased was found on 23rd July 2012 stuffed into a sack in Mathiyoa River.
7. There is the additional evidence from the pathologist (PW8) and that of two police officers (PW9 and PW10).
8. I am well guided by *Bhatt v Republic* [1957] E.A. 332, *R v Kipkering arap Koske & another* 16 EACA 135 (1949). On the digest of the evidence of the *all* the *ten* witnesses, I am persuaded that the Republic has established a case requiring an *explanation* by the accused.
9. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I place *both* accused on their defence.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 27th day of March 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Accused.

Mr. Kirubi for the accused.

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.