



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL (MURDER) NO. 59 OF 2016

REPUBLIC.....PROSECUTOR

-VERSUS-

JOSEPH KOSGEI LOMAN.....ACCUSED

RULING

1. The accused **Joseph Kosgei Loman** was on the 11th October 2016 charged with the offence of murder of one Jackline Ambani Mbone deceased contrary to **Section 203** as read with **Section 204 of the Penal Code**. He pleaded not guilty.

The prosecution called two witnesses in support of their case. It was alleged that on the 17th September 2016 at Kaptembwa estate in Nakuru Township, the accused murdered Jackline Ambani Mbone.

2. **PW1** was Josephine Mukosho Lukale. Her evidence was that the deceased was her cousin and that she had travelled from Nairobi to visit her but upon reaching Nakuru town, asked her to take a *boda boda* motorcycle to her residence.

She testified that she spoke with the *boda boda* rider to direct him to her residence but after thirty minutes, the deceased's phone went unanswered. It was her testimony that the deceased never reached home and was found murdered the next day.

It was her evidence that she did not know the motorbike rider nor did she ask him his name.

3. **PW2** was Julius Amukolo a brother to the deceased. His testimony was that he did not know who or how his sister died, and that he was only informed of his sister's death the next day.

He attended the postmortem and identified the body as that of the deceased.

4. The prosecution closed its case without calling any other witness.

5. The offence of murder is serious. The prosecution is under a legal duty to prove its case beyond reasonable doubt, the proof required of a criminal case.

6. From the above short evidence, it is not possible to make out a *prima facie* case against the accused. In the case **Ramanlal Trambakal Bhatt (1957) EA, at 334**, the Court rendered that

“... it may not be easy to define what is meant by “prima facie” case but at least it must mean 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.”

7. None of the two prosecution witnesses witnessed the murder of the deceased or had an idea as to who would have committed the offence.

It is not clear why or on what basis the accused person was charged with the offence. A suspicion however strong cannot be a basis in law for conviction in a criminal case.

The cause of death of the deceased was not established as the doctor who performed the autopsy was not called to testify.

8. There is no any evidence that could link the accused to the deceased's death. The mere fact that the accused was a *boda boda* rider is not enough to link him to the murder.

9. In the circumstances I have no alternative but to acquit the accused under **Section 306(1) of the Criminal Procedure Code.**

Joseph Kosgei Loman is thus set free unless otherwise lawfully held.

Dated, signed and delivered this 27th Day of March 2019.

J.N. MULWA

JUDGE