

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 10 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOYCE WANZA MUTUA.....ACCUSED

RULING

Joyce Wanza Mutua, called “the accused” in this ruling, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of this offence are that on the night of 12th and 13th January 2014 at Kahawa Sukari Estate First Avenue off Baringo Road the accused murdered Joseph Kiragu Warui. The accused has denied committing this offence. She is represented by Mr. Mutisya, learned counsel.

The prosecution has concluded its case after calling a total of ten (10) witnesses. The summary of the evidence presented in court is that frantic knocking at the doors at Kahawa Sukari Estate on the night of 12th and 13th January 2014 and distress calls for help in getting an ambulance were heard by the residents of the Estate including Nelson Mburu Mbugua, PW3, (Mburu). It was the accused calling for help. Mburu went outside to find out what was happening. He spotted the accused, his neighbour, retreating to her house. Mburu followed her into the house. He found the accused seated in her sitting room crying. Mburu saw a man lying on his back on the ground with wounds on his chest, stomach and hand. The accused was asking for an ambulance. Mburu decided to report the matter at the nearby Police Post. The report was received by CPL Zacharia Wachira Nderitu, PW2 (CPL Nderitu) who was the duty officer. In company of the reportee and crime mate PC Wanja, CPL Nderitu went to the scene. He confirmed the report and called the scenes of crime personnel and officers from the Directorate of Criminal Investigations.

The scene was photographed and the body transferred to the City Mortuary. It was examined by Dr. Oduor Johansen on 14th January 2014. The doctor found a stab wound below the sternum bone, stab wound on the left side of the chest, stab wound on the left side of the abdomen and stab wound on the left forearm and bruises on the upper right arm. Internally the doctor found he found injuries to the covering of the heart and accumulation of blood between the covering of the heart and the heart itself. He found stab wounds on the intestines and bleeding to the abdominal cavity. The doctor concluded that the deceased died due to multiple injuries caused by penetrating trauma.

Anthony Kitheka Mwinzi, PW7, (Kitheka) was manning the gate of the Estate where the accused and the deceased lived that evening. He testified that at about 8.00PM on 12th January 2014 he saw the accused pass by the gate going to the shops. She returned shortly thereafter. He testified that at about 10.00PM on the same evening he opened the gate for the deceased to drive into the Estate. He testified further that at about 1.00AM the following morning when a police vehicle with police officers came to the Estate to the house of the accused he learned that the deceased had died.

I have considered this evidence to determine whether it makes out a case for which the accused could be called upon to answer. It is clear to me that there is no eye witness to the events leading to the death of the deceased. It is my view that the case for the prosecution is anchored on circumstantial evidence. I have examined this evidence and at this state of the trial and without going into the finer details of examining the circumstances surrounding the death of the deceased, I find and hold that the death of Joseph Kiragu Waarui occurred as a result of injuries caused by penetrating force trauma. A knife recovered from the scene was examined by Elizabeth Waithera Oyiego, PW5, and confirmed to have been the murder weapon. This is unlawful death. The circumstantial evidence available does not seem to point to possibility of any other person who might have caused this death. It is my finding therefore that I am convinced that the evidence by the prosecution establishes a case against the accused person to make this court call upon her to make her defence to the charge she is facing. Upon taking down the defence of the accused person, this court will be in a position to deliver its reasoned judgment. I am satisfied that the evidence so far adduced satisfies the provisions of Section 306 (2) of the Criminal Procedure Code and hereby place the accused on her defence. She is informed of her right to address this court on the manner she wishes to make her defence and whether she will be calling any witnesses.

Orders shall issue accordingly.

Delivered, dated and signed this 23rd day of May 2019.

S. N. Mutuku

Judge