



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE (MURDER) NO. 32 OF 2018

REPUBLIC.....PROSECUTOR

-VERSUS-

AGNES OMUYOYI.....RESPONDENT

RULING

The accused is charged with the offence of Murder contrary to **Section 203 as read with Section 204 of the Penal Code**. He pleaded not guilty, and the prosecution case commenced with two witnesses having testified.

The 3rd witness was a minor stated to be nine (9) years old, upon the court conducting a *voire dire* examination made a finding that although she understood why she was in court, she could not testify as she could not respond to very basic questions, nor was she loud enough for the court to hear or comprehend whatever she was testifying to.

By an application dated 19th March 2019 the prosecution sought that the minor (MA) be declared a vulnerable witness and be allowed to give her evidence through an intermediary, her religious teacher of her former church, [Particulars withheld].

Article 50(7) of the Constitution provides that

“In the interest of justice a court may allow an intermediary to assist a complainant or an accused person to communicate with the court.”

Through the *voire dire* examination by the court, there is no doubt that the witness (MA) is a vulnerable witness. I declare her as such.

In the case **M.M. -vs- R (2014) e KLR the Court of Appeal** rendered that

“The whole object of the proceedings through an intermediary is to achieve fairness in the determination of the rights of all people involved in a trial and to promote the welfare of a child or vulnerable witness.”

For those reasons, and having observed the minor myself, I am satisfied that the minor’s testimony should be taken through an intermediary.

However I am not satisfied of the proposed intermediary, the minor’s alleged religious teacher.

I am of the opinion that such intermediately should be a neutral person, in the person of the Probation Officer, Nakuru County, being an impartial person and on account of his/her expertise and experience in court matters.

The function and role of the intermediary is to, and shall be to convey the substance of any question to the vulnerable witness, inform the court at any time that the vulnerable witness is fatigued or stressed and to request the court for a recess among other roles – See **Section 31(7) of the Sexual Offences Act No. 3 of 2006**.

It is so ordered.

Dated, delivered and signed at Nakuru this 24th Day of June 2019.

.....

J.N. MULWA

JUDGE