



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL CASE NO.33 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JACKSON MUTUA MBULA.....ACCUSED**

**RULING**

1. The accused **JACKSON MUTUA MBULA** was charged with the offence of murder contrary to sections 203 as read with section and 204 of the Penal Code, Cap 63. It is alleged that the on the 25<sup>th</sup> day of October, 2015, at Mlolongo Township in Athi River District within Machakos County murdered the accused **SHAREEN KANINI NZUKI** He denied having committed the offence and which necessitated a trial.

2. The accused was represented by Miss Mulundu whilst the state was represented by Mr Machogu.

3. Regarding the standard of proof, the Prosecution has the duty to prove all the ingredients of the offence beyond reasonable doubt. **See: Woolmington vs. DPP [1935] AC 462.** However, this does not mean proof beyond shadow of doubt. If there is a strong doubt as to the guilt of the accused, it should be resolved in the favour of the accused person. Therefore, the accused person must not be convicted because he has put a weak defence but rather that prosecution's case strongly incriminates him and that there is no other reasonable hypothesis than the fact that the accused person committed the alleged crime.

4. Prosecution must prove all the ingredients of the offence of murder in order to sustain a conviction thereof. As per the elements provided for under section 203 as read with section 204 of the Penal Code, prosecution must prove the following ingredients beyond reasonable doubt:-

***i. That the deceased died;***

***ii. That the death was unlawfully caused;***

***iii. That there was malice aforethought; and***

***iv. That the accused person directly or indirectly participated in the commission of the alleged offence.***

5. The Prosecution called a total of seven (7) witnesses in support its case. Pw1 was Mary Mukonyo Nzuki who testified that the deceased was her daughter and that the accused is her son in law and it was her testimony that on 24.4.2014 her daughter asked for money to go to the salon and later she realized her money was missing and the deceased admitted to have taken the same. She stated that the following day she received a call that the deceased and her son had been killed.

6. Pw2 was Lorraine Nzilani Nzuki who testified that on 24.4.14 she visited the deceased who was her sister and who had left for the salon and when the deceased returned at 9 pm she left her with the accused and her deceased child in the house. She added that the following day she received information that the deceased had died.

7. Pw3 was Joseph Muli who testified that he was at the mortuary on 30.4.2014 to identify the body of the deceased to pave way for the post mortem examination.

8. Pw4 was Stephen Muendo testified that on 25.4.2014 he saw a fire at the scene and in the process of putting out the fire he saw the bodies of the deceased and her child on a bed in a room that was being occupied by the deceased. He stated on cross examination that he did not see the accused at the scene.

9. PW5 was Dr John Mutunga who testified in respect of an autopsy that was carried out on the deceased and her son which revealed that the deceased had deep cut wounds and he formed the opinion that the deceased and her son died as a result of shock caused by assault with a sharp object.

10. Pw6 was IP Jamila Murugu who testified that on 25.4.14 she received a report of a fire in one of the houses at the scene and she went and saw the bodies of the deceased and her male child. On cross-examination, she told the court that he did not see the accused at the scene.

11. Pw7, Sgt Allan Odallo testified that he investigated the instant matter and established that the accused and the deceased persons were living together as a family and that the accused went into hiding after the incident but however surrendered himself to Machakos police station.

12. Thereafter, prosecution closed its case. Upon closure of the prosecution's case, the learned defence counsel submitted that there is no case to answer for there is no direct evidence linking the accused with the murder of the deceased persons. Further that the prosecution's evidence is circumstantial and uncorroborated and placed reliance on the case of **Republic v Silas Magongo Onzere alias Fredrick Namena (2017) eKLR** and prayed that the court finds that the accused has no case to answer and that the accused be released under Section 306(1) of the Criminal Procedure Code. The state did not file any submissions.

13. It is trite law that prior to placing an accused person to his/her defence, the prosecution is required to have established a *prima facie* case against such accused person. It is now a well-established principle that a *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence placed before it would convict the accused person, if no evidence or explanation was set up by the defence. *See Ramanlal .T. Bhatt vs. R [1957]E.A 332*, where the East African Court of Appeal held that a *prima facie* case could not be established by a mere *scintilla* of evidence or by any amount of worthless, discredited Prosecution evidence.

14. Also, in the case of *State Vs Rajhnath Ramdhan, Amoy Chin Shute, Sunil Ramdhan and Rabindranath Dhanpaul. H.C.A No. S. 104/1997*, J.P. Moosali while quoting Lord Parker C.J.in *Sanjit Chaittal Vs. The State (1985). 39. WLR. 925* stated that:

***“A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence adduced by the prosecution to prove an essential element in the alleged offence; b) when the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it...”***

15. I have carefully evaluated the prosecution's evidence. I find that, in the absence of any explanation to the contrary from the defence, the prosecution evidence does establish the three (3) ingredients of the offence of murder. It is not in dispute that there was death as a result of an assault by a sharp object. On the question of the accused's participation, this court finds that, in the absence of any evidence to the contrary, the evidence of PW1, Pw2 and Pw4 does point to participation of the accused person. In arriving at the above conclusions, I do recognize that at this stage, the standard of proof is not proof beyond reasonable doubt as required for a fully-fledged criminal trial. Rather, what is essential is such evidence which if taken literally or on the face of it would establish the essential ingredients of the Offence of Murder, as well as the accused's participation therein.

16. For those reasons, I find that there is some evidence adduced against the accused person to establish a *prima facie* case against him and sufficient to put him on his own defence for the offence of murder contrary to sections 203 and 204 of the Penal Code Cap 63. It transpired from the evidence of Pw2 that she had left the accused herein and his wife and child at 9pm. Further the accused herein disappeared from the area after the incident and went into hiding. The evidence placed the accused at the scene of crime and which calls him to be placed on his defence.

17. In the result I find the prosecution has established a *prima facie* case and that the accused has a case to answer requiring him to conduct his defence in line with the provisions of section 306 (2) of the Criminal Procedure Code.

It is so ordered.

**Dated and delivered at Machakos this 30<sup>th</sup> day of October, 2019.**

**D. K.Kemei**

**Judge**