



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL CASE NO. 15 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

CATHERINE WAWIRA NJAGI ALIAS WAMBETI.....ACCUSED

RULING

A. Introduction

1. This is a ruling on whether the accused herein has a case to answer to warrant her being put on her defence.
2. The accused herein is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on the 4/03/2017, at Kangaru village within Embu County, she murdered Lydia Wanja. The accused pleaded not-guilty to the charge.
3. The prosecution called seven (7) witnesses in support of their case which is summarised herein.

Prosecution Case

4. PW1 testified that on the 4/3/2017 at around 8:45pm he received a call from his brother, Sellessio who was the accused's husband, to the effect that the accused had cut the deceased severally. PW3 witnessed the deceased's post-mortem at Gakwegori Funeral Home.
5. PW4, Corporal Catherine Nyambura testified that on the material day at around 10.42hours PW1 made a report at Itabua Police Station to the effect that he had received information from her brother, one Sellessio that the accused herein had stabbed the deceased.
6. PW5, Dr. Phyllis Muhonja carried out the post-mortem on the deceased and concluded that the deceased died as a result of a single stab wound into the left femoral artery and vein leading to haemorrhagic shock.
7. PW6, Corporal Paul Irungu the investigations officer testified that his investigations led him to one Sellessio Njagi Njeru, who has since passed on, but who gave the name of the accused as the suspect who had attacked the deceased. PW6 further testified that when he went to arrest the accused she had disappeared from her home but that he later arrested her at Kiirie village of Kiambere.
8. PW7 Dr. Joseph Thuo examined the accused and found her fit to plead to criminal charges.

B. Accused's Submissions

9. It was submitted that there was no evidence, forensic or otherwise that connected the accused to the injuries that caused the death of the accused and as such the ingredients of murder and culpability of the accused had not been adduced to warrant her to be placed on her defence.
10. It was also submitted that none of the prosecution witnesses heard the accused threaten to kill the accused and further that no prima facie case had been made out against the accused as per the principles set out in the case of **Republic Vs Alex Mwanzia Mutangili [2017] eKLR**.

C. Analysis of the Law

11. I have considered the charge as well as the evidence by the witnesses of the prosecution and the oral submissions of the all the counsels.

The issue here is whether at the conclusion of the prosecution's case, the court would find that the accused has a case to answer for the offence of murder.

12. The burden of proof of an accused guilt rests solely on the prosecution throughout the trial save where there are admissions by the accused person. Similarly, at the close of the prosecution case, the prosecution must satisfy by way of the evidence that a *prima facie* case exist to warrant the accused person to be called upon to give his/her defence.

13. The relevant provision to this question falls under the provisions of **Section 306 (1) and (2) of the Criminal Procedure Code** which provides *inter alia* that;

“when the evidence of the prosecution case is concluded the court shall consider the evidence and any arguments made by either the defence or prosecution case to determine whether a case against the accused has been made on the allegations/or charge. If the court finds that there is no evidence that the accused has committed the offence the court shall record a finding of not guilty and order for a discharge or acquittal.”

14. In the alternative if from the evidence of witnesses for the prosecution the court concludes that there is evidence to support the charge against the accused persons it shall invite them to tender evidence personally or call witnesses in their defence. The court is obligated to exercise discretion under section 306 (1) of the Criminal Procedure Code to determine the evidence of a *prima facie* case at these half-time submissions of the trial in a criminal case.

15. The legal principles to guide a trial court in making a determination on a *prima facie* case are clearly stipulated in both the persuasive authorities and in the Eastern African case of **R.T. Bhatt v Republic EA 332 – 334 & 335**. The legal principles which run through the cases cited revolves around sufficiency of evidence capable of establishing the ingredients of the offence the accused is charge with. Secondly, a mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence. Thirdly it is evidence adduced by the prosecution such that a reasonable tribunal properly directing its mind would convict the accused in absence of any explanation when called upon to answer or put on his defence.

16. In the instant, the testimony of each of the nine (9) witnesses called by the prosecution has been evaluated against the charge of murder facing the accused. The standard of proof required at this stage is not that of beyond reasonable doubt as the court has not had the advantage of the defence.

17. From the evidence placed before me, I am satisfied that the test of a *prima facie* case has been met by the prosecution to warrant the accused person to be called upon to answer.

18. The upshot of all this is that the accused person has a case to answer and is hereby called upon to give her defence.

19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF DECEMBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Accused

Accused present in person