



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 92 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

SUSAN MORAA OKETCH.....ACCUSED

RULING

1. The accused **SUSAN MORAA OKETCH** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which are that on 17<sup>th</sup> September, 2015 at Kiambio slums in Kamukunji Sub-County within Nairobi County murdered **JOB OKETCH OINO**.

2. The accused pleaded not guilty to the said charge and to prove its case against her the prosecution called a total of seven (7) witness and at the close of the prosecution case it was submitted by the prosecution that the circumstantial evidence on record was overwhelming and pointed out to the fact that the accused was the last person to be seen with the deceased before. The fatal injuries were inflicted on him and that the accused when questioned by the prosecution witnesses gave contradictory accounts on what had happened to the deceased.

3. It was therefore submitted that the prosecution had established a prima facie case against the accused to enable the court place her on her defence.

4. On behalf of the defence it was submitted that there were no eye witnesses to the death of the deceased, neither was there any evidence linking the accused to the death as the prosecution had failed to prove motive. It was therefore submitted that the prosecution had failed to prove a prima facie case against the accused who should not be put on her defence.

5. At this stage the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case has been made to justify calling upon the accused person to offer an explanation as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

*“All the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively beyond reasonable doubt. A ruling that there is a case to answer would be justified in my opinion in a border line case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”*

6. I have taken into account the fact that a detailed analysis of evidence is not advisable at this stage should the court put the accused on her defence as that might compromise the defence the accused is likely to offer but having looked at the evidence of **PW1 CAREN OMWERI, PW3 JARED MOGAKA ONYWERE** and **PW4 KEEN CYRUS OMWONGA** and **PW7 DR. NDEGWA** I am of the considered opinion and find that a prima facie case has been made out against the accused person to enable the court put her on her defence which I hereby do. The accused shall with the advice of her Advocate on record having been informed of her rights under **Section 306(3)** choose how she would like to defend herself.

Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of January, 2018

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**J. WAKIAGA**

**JUDGE**

**In the presence of:**

*Mr. Meroka for the State*

*Mr. Gatumala for Saenyi for the accused*

*Accused present*

*Karwitha - Court clerk*