



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 102 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

MARGARET KUKUTIE NAIRENGE.....ACCUSED

RULING ON A CASE TO ANSWER

1. The accused herein faces the charge of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are that on the night of 24th and 25th July 2012 at Shankoe village in Transmara West District within Narok County murdered **JONATHAN KUKUTIE NAIRENGE**.

2. The accused pleaded not guilty to the charge and a trial was conducted in which the prosecution presented the evidence of a total of 8 witnesses.

3. The testimony of the first witness (PW1) was heard by my predecessor in the case, Nagilla J. who was soon thereafter transferred to another station after which the case was placed before me for further hearing on the prosecution's case.

4. On 16th May, 2016 the case came up for hearing before me when directions were taken that the case proceeds from where it had reached before he previous judge. 7 witnesses then testified before me and I have perused the testimony of PW1 for the purpose of writing this ruling on whether or not the accused has a case to answer.

5. In summary, the prosecution's case was that the accused and the deceased were wife and husband respectively. That on the night of 24th/25th July 2012, PW1 Brian Ledama Werenge (15 years) who happens to be the eldest child of the accused and deceased, witnessed the accused hit the deceased on the neck with a piece of firewood and that the deceased later died.

6. **PW2 and PW3** learnt of the death of the deceased on the morning of 25th July 2012.

PW4 DR. MISOI SAMUEL tendered the post mortem report which showed that the cause of the deceased's death was suffocation due to strangulation.

8. **PW5 and PW6** similarly learnt about the demise of the deceased on the morning of 25th July 2012 while PW7 Elizabeth Waithera Oyiogo was the Government analyst. According to PW7, her analysis of the piece of wood that was submitted to her showed that the blood on the wood was not the blood of the deceased, but was blood of an unidentified female.

9. **PW8 P.C. MASOND RASHID** was the investigating officer.

10. From the above overview of the evidence tendered by the prosecution witnesses, I am satisfied that a prima facie case has been established against the accused person to warrant her being put on her defence. The accused's own minor son, PW1, claimed that he saw the accused hit the deceased with a piece of wood on the night in question.

11. A prima facie case under section 211 of the Criminal Procedure Code is made out when at the conclusion of the prosecution's case, the evidence adduced is sufficient, in so far as the charge is concerned to require the accused to make an answer to it failure of which a court properly directing its mind to the law and he evidence adduced, is sufficient to find a conviction.

12. With the evidence on record and without saying much at this point in the case, I find that the accused person has a case to answer and I hereby place her on her defence.

Delivered, dated and signed in at Kisii on 19th of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Omwega for the Accused
- Omwoyo court clerk