



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CRIMINAL CASE NO.9 OF 2017**

**REPUBLIC.....PROSECUTOR**

**- V E R S U S -**

**GEORGE MATHENGE NDUNGU.....ACCUSED**

**R U L I N G**

The accused person **George Mathenge Ndungu** was charged with the offence of ***Murder Contrary to Section 203 as read with Section 204 of the Penal Code.***

The particulars of the charge are that on 26/12/2013 at Manguo Village, Nyahururu District Laikipia County, murdered Ann Nyokabi Nduhiu.

The accused was certified fit to stand trial and the prosecution called a total of three (3) witnesses in support of their case.

**PW1 Naomi Wambui Chepkwony** is the mother of Ann Nyokabi Nduhiu(the deceased). PW1 received information about her daughter's death on 30/12/2013 and proceeded to Nyahururu Police Station, then Nyahururu County Hospital Mortuary where she identified body of the deceased. PW1 identified the accused as the husband of the deceased as they had lived together for about two years. PW1 found the accused also admitted at the same hospital after allegedly being assaulted by members of public.

PW1 did not know how the deceased met her death save for the information she received that the accused and deceased had domestic problems and that the deceased had returned home twice there before.

**PW2 Senior Sergeant Marube** who was then based at Nyahururu Police Station found this case had been assigned to investigate on 27/12/2013. The report was that the accused, a husband to the deceased had assaulted her and members of public in turn assaulted the accused and arrested him.

He visited the scene on 27/12/2013 at Manguo, visited the mortuary and saw injuries on the deceased's legs i.e. cuts; that the accused had been arrested with injuries inflicted by members of public. He was admitted for several days after which he was charged for this offence; that the accused was taken to the Police Station with a panga but it had no blood stains.

From investigations, PW2 found that the accused and deceased had disagreed and had not been living together but that the accused had been trying to woo the deceased to return to him when this incident occurred.

The postmortem was performed on the deceased by Dr. Mburu (PW3). The postmortem report was produced in court by Dr. Joseph Karimi. Dr. Mburu found that the deceased had sustained a big cut wound on the back of the left knee, deep cut wound on the back of the right knee and both lower limbs had blood stains from the knees downwards. The Doctor formed the opinion that the cause of death was severe haemorrhage due to multiple cut wounds.

To prove a charge of murder the prosecution is required to prove the following ingredients:

- 1) The death and cause of death of the deceased;**
- 2) That the death was caused by the unlawful act or omission of the accused;**
- 3) That the accused had malice aforethought.**

Before calling upon the accused to defend himself the prosecution has to establish a prima facie case against the accused. A prima facie case was defined in the case of **Ramanlal Tramballal Bhatt v Republic (1957) EA, 332 (P.334-335)** where the court said inter alia:

***“.....It may not be an easy task to define what is meant by a ‘prima-facie case’ but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, if no explanation is offered could convict.” See also Wibiro alias Mose v Republic (1960) EA 184.***

The fact of death of the deceased is not in doubt. PW1 and 2 went to the mortuary and saw the deceased’s body which PW1 identified and postmortem was carried out. The Doctor confirmed the death as being a result of severe haemohage due to deep cut wounds.

The only two outstanding issues are who inflicted the fatal injuries and did he have malice aforethought. Despite several adjournments, the prosecution was unable to call the eye witnesses to the incident. The same eye witnesses are the same people who arrested the accused and inflicted injuries on him but none of them was called to testify. It was alleged that the family members of accused had threatened the witnesses some even moved from the area but no reason was given why the witnesses were not protected. Apart from what PW1 & 2 were told, that it is the accused who assaulted the deceased causing her death, there is no direct or circumstantial evidence before this court to connect the accused to the murder. If the accused were called upon to defend himself and he opted to remain quiet, this court would have no option but acquit him.

I therefore find that the prosecution has failed to establish a prima facie case against the accused to warrant him to defend himself. He is hereby acquitted under Section 306(1) of the Criminal Procedure Code.

**Dated, Signed and Delivered at NYAHURURU this 28<sup>th</sup> day of September, 2018.**

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**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

Ms. Maina for State

Ms. Wanjiru holding brief for Ms. Muriithi for accused

Soi – Court assistant