

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 30 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JANE WANJA MWAURA.....1ST ACCUSED

NICHOLAS GITHU KIBUIYA.....2ND ACCUSED

RULING ON NO CASE TO ANSWER

1. The two Accused Persons, Jane Wanja Mwaura and Nicholas Githu Kibuiya, are charged with murder contrary to section 203 of the Penal Code as read together with section 204 of the Penal Code. It is alleged that the two Accused Persons, jointly with others not before the Court, unlawfully and with malice aforethought killed Joseph Kiarie Njau (“Deceased”) on the night of 26-27/05/2015 at Gathiru-ini Village of Githunguri District within Kiambu County.

2. The Prosecution presented ten (10) witnesses in a bid to establish its case beyond reasonable doubt. The Prosecution’s theory is that the 1st Accused Person, who was a wife to the Deceased, conspired with the 2nd Accused Person, to get rid of her husband through murder.

3. At this stage in the proceedings, the Court is required to make a finding whether the Prosecution has presented sufficient evidence to require the Accused Persons to be put on their defence or whether the case should be stopped at this point. The test to be utilized is the famous one stated in *Bhatt –vs- R [1957] EA 332*: whether, as a matter of law – without taking any conclusive view of the credibility and probative value of the evidence presented – the Prosecution has adduced *reasonable sufficient evidence* of the matter in respect of which it has the burden of proof. Reasonable sufficient evidence is one which a reasonable tribunal could convict.

4. In my view, the Prosecution has placed enough material to make this a fit case to require the Accused Persons to respond to the evidence adduced.

5. Consequently, the Court finds that both Accused Persons have a case to answer and puts them on their defence. The case shall be set down for defence hearing.

Delivered at Kiambu this 26th day of October, 2018.

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JOEL NGUGI

JUDGE