

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 51 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

T O.....ACCUSED

RULING

The accused in this case, TO, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The accused has denied committing this offence. The charge reads as follows:

TO: On the 6th day of June 2016 within Nairobi County murdered PM.

After calling nine witnesses to testify against the accused person the prosecution closed its case. Both the prosecution and the defence chose not to submit at this stage of the trial and opted to leave the matter to the court to deliver its ruling.

The evidence on record shows that on 6th June 2016 at about 6.45am to 7.00am David Njiru Kahira (PW1) heard screams from a plot behind his house at Bottomline in Kangemi. The screams were from the compound of one of the plots where PW1 owned iron sheet houses. He rushed there to find out what was happening. In a house near the gate of that plot he found a lot of blood. He pushed the door of the house open and saw a woman lying on the ground with blood stained clothes. He also saw a man whom he referred to as the husband of the injured woman. He identified the accused as that man. PW1 noted that the woman had a cut on the neck and injuries on her abdomen. The injured woman was carried to a clinic nearby. PW1 told the court that the people who had gathered were hostile towards the accused. It was feared that the accused may be attacked. They took him to the Kangemi AP Post. They handed the accused to CPL Peter Wanjohi (PW2) with a report that the accused had stabbed his wife. CPL Wanjohi placed the accused in custody. He visited the clinic where the deceased had been taken and found that she had been pronounced dead. He visited the scene. He found blood stains and a knife with bloodstains on its blade on the floor. He took the knife. He informed the OCS of Kabete Police Station. The accused was also taken to Kabete Police Station.

Further evidence by SK (PW3) and PM (PW4) both daughters of the deceased is that on 5th June 2016 at about 6.00pm S.K accompanied her mother to a nearby hair salon to braid her hair. PM was left at home preparing supper. The accused, who lived with the deceased as her husband, was away at the time. He returned home and found that the deceased and PW3 were not home. He called the deceased and sought to know when she would return home. When the deceased and PW3 arrived home, they were served with supper but the accused declined to eat. PW3 told her mother about a knife she had seen tucked at accused's waist. She told her mother about it and her mother sought to know from the accused why he was carrying a knife.

The family retired to bed and in the morning the two girls went to school leaving their mother preparing herself for the day while the accused was still sleeping. What happened thereafter is not clear from the evidence. The evidence of PW1 fills up the gap from the time he heard screams and rushed to the source of the screams only to find the deceased injured and lying on the ground.

I have considered all this evidence and that of Dr. Oduor Johansen (PW7) confirming the injuries sustained by the deceased. She had suffered penetrating stab wound on the right side of the chest above the nipple, stab wound on the back between the 2 shoulder blades, stab wounds on the right cheek, 2 slash wounds on the right abdomen, both lungs were perforated, 3rd right rib and 1st left rib were fractured, the heart was stabbed and there was accumulated blood 3000mls in the chest cavity. The doctor concluded that the cause of death was exsanguination due to severe chest injuries due to penetrating sharp force trauma. I find that the evidence establishes a strong case against the accused person. I am alive that no one saw the accused stabbing the deceased but I find circumstantial evidence to persuade me to conclude that the prosecution has discharged its mandate of establishing a prima facie case against the accused person. Consequently I find that the accused has a case to answer and I hereby place him on his defence. The accused is hereby informed of his right to defend himself and to inform this court the manner in which he wishes to defend himself and whether he has any witnesses to call. Orders shall issue accordingly.

Delivered, dated and signed this 18th day of December 2018.

S. N. Mutuku

Judge