



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 21 OF 2007

REPUBLIC.....RESPONDENT

VERSUS

NJOMO KAMAU GACHERU.....ACCUSED

RULING

1. The accused **NJOMO KAMAU GACHERU** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 23rd day of October, 2006 at Kamwangi village in Thika District of Central Province murdered **ANN WAIRIMU GITHAIGA**.
2. His trial has been dramatic! He first appeared before Justice Muga Apondi (Rtd) on 13/3/2007 before taking his plea on 21/3/2007 and on 20/6/2007 the matter was fixed for hearing before Mutungi, J (deceased) when it was adjourned at the instance of the State. On 13/10/2007 his trial commenced before Ochieng J who took the evidence of five (5) prosecution witnesses before being transferred from the Division. On 18/7/2012 directions having been given under **Section 200(2)** the matter proceeded for further hearing before Ombija J, (Rtd) who took the evidence of five additional witnesses before retiring from the Judiciary.
3. On 15/09/2016 this matter was placed before me for further hearing and for record purposes it must be stated that I have only heard the evidence of two prosecution witnesses being **PW11 IP BENSON WAMBUA** and **PW12 PC PAUL GAKOI** but I have had the advantage of reading and analyzing the typed copies of proceedings before my predecessor for the purposes of this ruling.
4. At the close of the prosecution case both the defence and the prosecution opted not to make any submissions on case to answer and in the unusual style which is now emerging left it for the court to decide based on evidence on record.
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. From the evidence tendered at the trial of the accused and in particular the evidence of PW1 and PW2 and while I am alive to the accused person’s Constitutional Rights under **Article 50(2)(i)**, I am satisfied that a prima facie case has been established by the prosecution to enable me put the accused on his defence which I hereby do. The accused is informed of his right under **Section 306(2)** of the **Criminal Procedure Code**.

DATED, DELIVERED and SIGNED at Nairobi this **31st** day of January, 2017.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Miss Nduati for the State

Mr. Gatumutu for Kairu for the accused

Accused present

Paul court clerk