



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL DIVISION**  
**CRIMINAL (MURDER) CASE NO. 8 of 2011**  
**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**WILSON MISIKO MUNGASIA.....ACCUSED**  
**R U L I N G**

1. The accused person herein, Wilson Misiko Mungasia Has been charged with one count of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which are that on the 10<sup>th</sup> day of February, 2011 at Mituri Village, Lukusi Sub Location, Vihiga Location within Kakamega County, murdered Selina Ikambi Anasi. The accused pleaded not guilty when he appeared before Lenaola J(as he then was) for plea on 02.03.2011.

2. The prosecution called 4 witnesses in its attempt to prove the charge of murder against the accused person. From the evidence of the 4 witnesses, the prosecution case is that on or about 09.02.2011 the deceased herein, Selina Likambi went missing from her home. Those who testified, and especially her son, Japheth Khalisia Anasi PW2 told the court that it was strange for his mother to go outside her home without informing anybody. It was not the deceased's habit to disappear from home without notice.

3. On 11.02.2011, at about 8.00am, the body of the deceased was found in the sugarcane plantation just outside her house covered with a blanket. The incident was reported to the area Assistant Chief as arrangements were made to take the body to the mortuary for preservation and post mortem examination. The body was found to have injuries on the head, neck and other parts of the body.

4. The evidence on record also reveals that the accused person herein, who is grandson to the deceased used to live in the same compound with the deceased, but soon after the deceased's body was discovered, the accused person disappeared from home. That the accused person's disappearance from him raised suspicion that he must have been the one who killed the deceased. He was apprehended on 16.02.2011 during the burial ceremony of the deceased.

5. Dr. Dickson Mchana, PW1 who conducted the post mortem examination testified that the deceased's body had an irregular, though not deep cut wound on the forehead measuring 11cm X 1.5cm. There was also a male condom in the deceased's genital parts with spermatozoa in it. Though the deceased did not suffer any fracture on the skull bone, there was haematoma on the back of the head, on both right and left side. In Dr. Mchana's opinion, the cause of death was head injury with evidence of sexual assault. The post mortem report was produced as PExhibit 1.

6. At the close of the prosecution case, both counsel asked the court to make a finding as to whether or

not the accused person has a case to answer.

7. After carefully considering the evidence on record, against the backdrop of the principles set out in the case of **Bhatt –vs- R [1957]E. A**, I have reached the conclusion that the prosecution has established a prima facie case requiring the accused person to be put on his defence. It is trite that at this stage in the prosecution of this case. The prosecution is not required to prove the case beyond any reasonable doubt. That is for another day. All that the prosecution is required to show is that the evidence on record is such that if the accused fails to say anything, this court is prepared to convict the accused person. I am satisfied that the prosecution has done so.

8. In the circumstances, I do find and hold that there is a prima facie case established against the accused person requiring him to be put on his defence. As provided under Section 306(2) of the Criminal Procedure Code, the accused person may give sworn or unsworn evidence and in both cases, he has a right to call witnesses. However, if he chooses to give unsworn evidence he will not be subjected to any questioning, whether by the court or the prosecution. If on the other hand, the accused person does not wish to make any statement in his defence, the law allows him to remain silent and let the court decide the case on the evidence that is before it. I now call upon the accused person either directly or through his advocate to say how he intends to proceed with his defence

Orders accordingly,

Ruling delivered, dated and signed in open court at Kakamega this 27<sup>th</sup> day of February, 2017

**RUTH N. SITATI**

**JUDGE**

In the presence of

.....Mr. Ngetich (present).....for State

.....Miss Akinyi for Miss Mukhwana.....for Accused

.....Poly Cap.....Court Assistant