



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NUMBER 24 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAMARIS MUENI MUSAU.....ACCUSED**

**RULING**

Damaris Mueni Musau, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence are that on an unknown date between 19<sup>th</sup> December 2014 and 24<sup>th</sup> December 2014 at Umoja One Estate, Buruburu Division within Nairobi County murdered Raphael Matheka Nzembu. The accused pleaded not guilty to this charge. She is represented by Mr. Oira Ratemo.

The prosecution has closed its case after calling a total of fifteen (15) witnesses. The prosecution did not wish to submit at this stage of the trial. Mr. Oira Ratemo submitted on behalf of the accused. He submitted that the investigations were poorly conducted and that the accused was not involved with the death of the deceased. He submitted that Eric Kyalo, PW6, and Nyamai Kimwele, PW7, were the last people to see the deceased as they were with him on 19<sup>th</sup> December 2014 and that his body was found dumped in a river at Kariobangi South; that the two were not arrested but police treated Kimwele as an informer instead of a suspect; that the sale of the house had nothing to do with the death of the deceased; that the deceased was found still wearing the same clothes he was seen in on 19<sup>th</sup> December 2014 confirming that he did not go home that day; that the evidence produced in court is contradictory and that the accused did all she could to report the disappearance of the deceased. Counsel submitted that the prosecution has not established a prima facie case against the accused and relying on **R. v. Kipkering arap Koske & another Criminal Appeal No. 40 and 41 of 1949** counsel urged this court to acquit the accused. The case is an authority on circumstantial evidence.

I have considered all the evidence by the prosecution witnesses and the submissions of the defense counsel. Without going into the details of the same, it is my finding that the accused is implicated. I will give the reasons for so finding in the main judgment after taking the defense of the accused. In compliance with Section 306 (2) of the Criminal Procedure Code I find that the accused has a case to answer and place her on her defense. I have explained the requirements of Section 306 (2) of the Criminal Procedure Code that the accused is required to inform this court whether she will testify under oath or without taking oath and whether she will call witnesses. Orders shall issue accordingly.

**Dated, signed and delivered this 30<sup>th</sup> day of May 2017.**

**S. N. MUTUKU**

**JUDGE**