



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NUMBER 24 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SIMON KIILU KIOKO.....ACCUSED**

**RULING**

This is a ruling to determine whether the prosecution has established a prima facie case against the Simon Kiilu Kioko, the accused, to enable this court to make a finding that the accused has a case to answer and place him on his defence. 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 the night of 21<sup>st</sup> and 22<sup>nd</sup> June 2013 at unknown time at Munyu village within Kiambu County he murdered Elizabeth Munyiva Muteti, the deceased. The accused denied committing this offence. He is represented by Mr. Amutallah, advocate.

Eight witnesses testified for the prosecution. The summary of their evidence is that on 21<sup>st</sup> June 2013 at about 9.00pm, George Muigai Mbugua, PW1, (Mbugua) a farmer at Munyu was cycling along a footpath going home from Munyu shopping centre. He found the accused and the deceased. Both were known to him. The accused was seated while the deceased was lying down. Mbugua asked the accused what the matter was. According to Mbugua the accused was talking to himself but the deceased was not talking. The accused told Mbugua that the deceased was drunk and could not walk. Mbugua said the deceased had no clothes on the upper part of her body. Mbugau told the accused to dress the deceased and wait for her to get sober. Mbugua left.

On the following day, Mbugua learned that a woman had been killed. In company of Kimani Mwati, the area Village Elder, PW2, Mbugua went to Munyu Police Post and reported the matter. In company of police, they went to the scene where he had left the accused and the deceased the previous night. They found the body of the deceased about 50 metres from where Mbugua had seen the accused and deceased the previous evening. There were blood stains at the scene. Mbugua recognized the body as that of the deceased. Police looked for the accused at his home but found the house locked. He was arrested on 2<sup>nd</sup> February 2013 in Makongeni Thika by motor cyclists commonly referred to as “Bodaboda riders”. They took him to Munyu Police Post. He was transferred to Makongeni Police Station. After the investigations he was charged with this offence.

Death of the deceased has been confirmed by the evidence of the pathologist who testified that deceased died due to severe head injury due to blunt force trauma due to assault.

The prosecution counsel submitted at the close of the prosecution and cited the evidence on record. She urged that the prosecution has established a prima facie case against the accused and urged the court to place the accused on his defence. On the other hand, the defence counsel submitted that the prosecution has failed to establish a case against his client to require him to be placed on his defence. He submitted that the relationship between the accused and the deceased was not proved and that the time when PW1 claimed he saw the accused and the deceased was 9.00pm with the aid of moonlight whose intensity was not proved. Counsel submitted that PC Wanjala who recorded the statement of the accused was not summoned to testify and this court was not given reasons as to why. Counsel took issue with the investigations terming them as inadequate. Counsel urged the court to acquit the accused at this stage of the trial.

I have considered all the evidence. I am persuaded that a prima facie case has been established against the accused person. He was the last person to be seen with the deceased on 21<sup>st</sup> June 2013. I have considered that it was at 9.00pm and that there was moonlight. It is true that the intensity of the moonlight was not established but I have noted that the accused was known to Mbugua PW1 for 10 years prior to this incident. PW1 also knew the deceased. He stopped at the scene and talked to the accused when he was enquiring what was wrong with the deceased. I have also noted that the accused was not found in his house in the morning on 22<sup>nd</sup> June 2013. He was at large until about two weeks later when he was arrested at Makongeni. In my view this is sufficient evidence to persuade this court to find that there is a case made out against the accused person.

In compliance with the provisions of Section 306 (2) of the Criminal Procedure Code, I find that the accused has a case to answer. Consequently, I will place him on his defence. I hereby inform him of his right under the above section to address this court on whether he will give a sworn or unsworn statement of defence and whether he will be calling witnesses to his defence. Orders shall issue accordingly.

**Dated, signed and delivered this 16<sup>th</sup> day of May 2017.**

**S. N. Mutuku**

**Judge**