



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 33 OF 2012

REPUBLIC.....PROSECUTION

VERSUS

DIANA KARIMI NJERU.....ACCUSED

RULING

1. At the close of the prosecution's case, the defence filed submissions arguing that the prosecution had not made up a *prima facie* case against the accused for her to be put on her defence. The following issues were raised:-

- *That the deceased was the aggressor and that the accused was entitled to defend herself.*
- *That there was no evidence that the accused caused the unlawful act which resulted in the death of the deceased.*
- *That the element of malice aforethought was not established.*

2. The prosecution in their submissions argued that there was sufficient evidence to put the accused on his defence. The evidence of PW6 on the words uttered by the deceased were relied on together with circumstantial evidence. It was argued by the prosecution that the self-defence raised is not backed by the evidence on record.

3. The prosecution further argued that the accused applied excessive force which was evidence of malice aforethought.

4. On perusal of the submissions of the defence and the authorities cited, I am not convinced that the evidence on record is insufficient to make up a *prima facie* case. There is circumstantial evidence to show that accused's involvement in the stabbing of the deceased person. The issue of self-defence would have to be raised and dealt with in the next stage of the proceedings. It is not possible to articulate in the submissions at the close of the prosecution without the person relying on it, pronouncing it and defending his act.

5. In a ruling for a case to answer the court need not give a detailed analysis and evaluation of the evidence to avoid pre-empting the defence case.

6. I reach a conclusion that the prosecution have made up a *prima facie* case.

7. The accused is hereby called upon to make her defence.

8. Section 211 of the Criminal Procedure Code is therefore applicable.

DATED, DELIVERED AND SIGNED AT EMBU THIS 1ST DAY OF AUGUST, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Okwaro for accused

Accused present