

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISUMU

CRIMINAL CASE NO. 66 OF 2014

BETWEEN

REPUBLIC.....PROSECUTOR

AND

CYNTHIA OMBUKA OPIYO.....ACCUSED

RULING

1. **CYNTHIA OMBUKA OPIYO** was accused of murdering her brother in law, **KELVIN OCHIENG** (“the deceased”) on 23rd August 2013 at Nyalenda Estate in Kisumu District of Kisumu County contrary to **section 202** as read with **section 203** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. She pleaded not guilty and the prosecution called 3 witnesses prove its case.

2. The deceased died as a result of excessive bleeding following puncture of the lung as a result of a stab wound to the chest according to the post-mortem report prepared by Dr Sylvia Kemunto following a post mortem performed on his body on 6th September 2013 at Jaramogi Odinga Oginga Teaching and Referral Hospital in Kisumu.

3. The investigating officer, PC Allan Yumbi (PW 3) gave an account of the investigation. He told the court that the accused was residing with her husband, Maurice Otieno and her brother in law. On the night of 23rd August 2013, a fight ensued between the accused, her husband and the deceased over an allegation that the deceased had stolen her rice. During the fight, the accused stabbed the deceased.

4. Although investigators account pointed to the deceased, the prosecution only called two witnesses. The first witness, George Ondoro (PW 1), testified that he went to the scene and viewed the deceased body after he had been informed of the incident. The other witness Gordon Otieno Abade (PW 3) testified that he was woken up on the material night by the accused’s husband and told that the accused had stabbed the deceased. He recalled that the accused was with her husband when she came to his house.

5. At this stage of the proceedings, I am required to decide whether there is sufficient evidence to put the accused on his defence. What amounts to a *prima facie* case has been set out in several cases among them *Ramanlal Trambaklal Bhatt v R* [1957] EA 332, *Wibiro alias Musa v R* [1960] EA 184 and *Anthony Njue Njeru v Republic* NRB CA Crim. App. No. 77 of 2006 [2006]eKLR. It is that although a court is not required at this stage to establish that the prosecution has proved its case beyond reasonable doubt, it must nonetheless be satisfied that a reasonable tribunal directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

6. The prosecution did not call any direct witnesses to the offence and all the evidence pointing to the accused was hearsay. I also note that the prosecution did not call other witnesses who would have shed light on the incident and foreclosed any avenue of doubt that would point exclusively to the accused as the person who murdered the deceased and cause me to call upon her to defend herself.

7. As a result, I must now enter a verdict of not guilty in terms of **section 306 (1)** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*. The accused is acquitted and set free unless

otherwise lawfully held.

DATED and DELIVERED at KISUMU this 21st day of September 2017

D.S. MAJANJA

JUDGE

Mr K'ouko, Advocate for the accused.

Ms Osoro, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions, for the State.