

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINA CASE NO. 35 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

GRACE WANJIKU MAKUMI.....ACCUSED

RULING

Grace Wanjiku Makumi (herein the accused) is charged with murder contrary to section 203 as read with section 204 of the Penal Code in that on 15th day of March 2014 at about 11.00am at Mihang’o Estate within Embakasi East, Nairobi County jointly with another not before the court murdered Elizabeth Atieno Maina (herein the deceased). The accused pleaded not guilty to this charge. He is represented by Mr. Ochako, advocate.

The prosecution tendered evidence to show that the accused is implicated in the death of the deceased that occurred on 15th March 2014. The deceased was the house help of Samuel Makumi (PW7) and Phylis Wairimu Makumi (PW1). Samuel Makumi has two wives and homes, the accused and Phylis Wairimu. Phylis lived in Mihang’o while the accused lived in Saika. On the date in question Hussein Juma (PW2) and Swaleh Suleiman (PW3) were walking near Samuel’s home at Mihang’o around 11.00am when they noticed smoke on the house. They also spotted a woman identified as the accused and a young girl going away from the said burning house. The accused and the girl boarded a motorcycle commonly referred to as “bodaboda”. According to Hussein and Swaleh, the two women looked nervous and urged the motorcycle rider to start the motorcycle quickly and leave. Attempts by Swaleh and Hussein to stop the rider were unsuccessful. Both witnesses ran towards the burning house where other neighbours had started gathering. They could hear a baby crying inside the house. They entered the house and found baby J.W. She was covered in baby blankets which smelt of paraffin. They rescued the baby. A search in the burning house yielded the house help (deceased) who had died at the time. Her body, with legs and hands tied together, was removed from the house and placed outside at the compound.

The accused, who is the co-wife to Phylis, was traced later that day and arrested. She was later charged with this offence.

After calling eleven (11) witnesses, the prosecution closed its case. I have examined the evidence at this stage of the trial when this court is required to determine whether the prosecution has made out a prima facie case against the accused to warrant her being placed on her defence. My careful consideration leads me to the conclusion that the accused is implicated in evidence and I will and do hereby hold that she has a case to answer. I hereby inform her of her rights under section 306 (2) of the Criminal Procedure Code to inform the court whether she will give evidence in her defence under oath or without taking the oath. She is informed of her right to call witnesses in her defence and to inform this court the number of witnesses she wishes to call. I make orders accordingly.

Dated, signed and delivered this 31st day of March 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Onunga for the prosecution

Mr. Ochako for the accused

Ms Grace Wanjiku Makumi, the accused

Mr. Daniel Ngumbi, court clerk