



**REPUBLIC OF KENYA**

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

**CRIMINAL (MURDER) NO. 57 OF 2014**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**BENARD MARUBE ..... ACCUSED**

**RULING**

1. The charge against the accused is that of murder, contrary to S. 203 read with S. 204 of the Penal Code. He is said to have murdered his wife Priscikila Kemunto, on the 13<sup>th</sup> May 2014, at Mwamogesa Village Kisii County.

S.203 of the Penal Code provides that:-

***“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”.***

2. At the close of its case, the prosecution was required to have provided not only sufficient but also credible evidence for purposes of establishing a “prima facie” case against the accused and thus establish the material ingredients of the charge.

Basically, a “prima facie” case is one in which a reasonable court properly directing its mind to the law and the evidence before it would convict if no explanation is offered by the defence.

3. Herein, the evidence adduced by the four (4) witnesses against the accused other than establishing that the deceased died on the 13<sup>th</sup> May 2014 at 4.00pm has failed to show that the death of the deceased was caused by the accused by way of an unlawful act or omission. The production of two post mortem reports by different doctors (i.e P.Ex 1 and 2) was adequate prove that the cause of the death of the deceased was unknown such that she could have died from natural causes or as a result of a trauma whose origin was unknown. In essence, the necessary ingredients of the charge of murder were not established by the evidence so far adduced against the accused. It would therefore be dangerous to call upon him to make his defence as that would be tantamount to asking him to fill the gaps left wide open by the prosecution.

4. In the upshot, the accused has no case to answer and is accordingly acquitted at this juncture.

**J.R. KARANJAH**

**JUDGE**

[Delivered and signed this 30<sup>th</sup> day of June 2016].

[In the presence of Mr. Otieno for Prosecution and Mr. Sagwe for defence.]