



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 106 OF 2013**

REPUBLIC.....PROSECUTOR

VERSUS

EWM.....ACCUSED

**RULING**

EWM, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 4<sup>th</sup> day of November 2013 in Dagoretti District within Nairobi County he murdered RNN. The accused has denied committing this offence.

The prosecution presented evidence to support the case that the accused caused the death of the deceased. Eleven (11) witnesses were called to support that case. The accused and the deceased were man and wife according to the evidence. The only witness present on the night of 4<sup>th</sup> October 2013 when the crime was committed is PW7 H. K aged seven years. PW7 who testified without taking the oath told the court that when he woke up in the morning he found his mother dead and his father the accused having left the house. He said he could not go out of their house because the door had been locked from outside. His cries alerted Doris Kalunda Wamalwa their immediate neighbour in House No. 27B. PW7 and his parents lived in House No. 26B at Lenana in Nairobi.

PW1 told the court that she heard cries of PW7 and went to their house where she found the door latched from outside. She opened it and entered the house. She found PW7 crying. PW7 informed her that his father had killed his mother.

At the close of the prosecution case Ms Macharia for the prosecution submitted that the prosecution has established a prima facie case against the accused and called on the court to place him on his defence.

On the other hand, Mr. Gachau submitted that the evidence of PW7 required corroboration because he is a minor. Counsel submitted at length on circumstantial evidence. Counsel stated that the circumstantial evidence is not cogent and does not unerringly point to the accused as the person who killed the deceased. Mr. Gachau attacked the prosecution theory that the deceased was strangled to death and pointed out that the post mortem examination revealed that the cause of death was head injuries due to a blunt trauma. He urged the court to find that the prosecution has not established a prima facie case and that the accused has no case to answer. He asked the court to acquit the accused under section 306 (1) of the Criminal Procedure Code.

I have examined and analysed the prosecution evidence and I am convinced at this stage of the trial that the prosecution has established a prima facie case against the accused. I am alive to the principle that at this stage of the trial the court is not required to analyze in depth the merits and demerits of the prosecution case as it happens during writing of the judgement. This is the case because at this stage of the trial the threshold to be met is lower that at the close of the trial where the court has to determine whether the evidence proves beyond reasonable doubt that the accused is guilty of the offence charged. I will therefore and do hereby find that the accused has a case to answer and place him on his defence. The requirements of section 306 (2) of the Criminal Procedure Code have been complied with. Orders shall issue accordingly.

**Dated, signed and delivered this 9<sup>th</sup> day of June 2016.**

**S. N MUTUKU**

**JUDGE**

**In the presence of:**

Ms Macharia for the prosecution

Mr. Gachau for the accused

Mr. E W M, the accused

Mr. Daniel Ngumbi, court clerk