

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 114 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JANE NAMBUYE MANYONGE.....ACCUSED

RULING

Jane Nambuye Manyonge is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the charge are that on the 30th day of November 2013 at Riruta in Dagoretti withing Nairobi County she murdered Francis Manyonge Mulumeti. The accused denied committing this offence and the prosecution called 14 witnesses to support its case.

The prosecution presented a case that the deceased who lived with the accused as husband and wife was stabbed and injured inside their house in Riruta Nairobi. He died as result of the injuries he sustained. The prosecution names the accused as the person who stabbed the deceased and tried to conceal her actions by cleaning the blood from the scene. The evidence of the witnesses who went to the scene shows that they found the deceased lying on a mattress near the door of the house with a stab wound at the chest. They said there were bloodstains in the house and there were attempts to clean the blood off. Witnesses who were accused's neighbour told the court that the accused made frantic attempts to seek help to take the deceased to hospital but by this time the deceased was already dead.

At the close of the prosecution case counsel for the prosecution Ms Nduati submitted that the death of the deceased has been proved beyond reasonable doubt through the evidence of Dr. Ndegwa, PW11, who told the court that the cause of death was due to haemorrhage due to penetrating wound. Counsel submitted that both the accused and the deceased lived alone in their house and that their relationship was not peaceful; that blood stains were found in various parts of the house and an attempt had been made to clean it; that Jeremiah Asuku, PW1, who worked as the watchman at the building where accused and deceased lived arrived to work at 6.00pm and did not see the accused and the deceased either come in or go out of the compound until 11.30pm when the accused sought help; that household items were found scattered in the house and that prosecution witnesses were consistent about what had happened. Counsel urged the court to find that the prosecution has established a prima facie case and place the accused person on her defence.

Mr. Kraido, counsel for the accused, submitted that the prosecution has not proved murder or manslaughter and asked the court to acquit the accused under **section 306 (1) Criminal Procedure Code**. Mr. Kraido submitted that it was incumbent on the prosecution to establish death of a human being has occurred; that the death was caused with malice aforethought and that the accused is responsible. He submitted that the prosecution has failed to exclude other persons who may have caused that death and that the conduct of Clinton Obongo, PW10, in locking himself inside his house and failing to assist when accused person sought help was curious and he may have had a hand in the death of the deceased; that the police did not investigate other leads that may had revealed that the deceased had staggered home injured; that the deceased's shirt did not have a tear where the stab wound was suggesting that he was not wearing the shirt when he was stabbed and that the accused cannot be called upon to fill the gaps left by the prosecution case.

Further submissions by the defence counsel are that the prosecution is relying on circumstantial evidence but has failed to satisfy the principles set out in **Republic v. Kipkering Arap Koske & Another (1949) EACA 135** because there exists inculpatory factors which are consistent with accused's innocence; that

the prosecution relied on the theories that the accused and the deceased lived a childless life, that the accused was after the deceased's retirement benefits and that she tried to conceal her involvement in stabbing the deceased by cleaning blood in the room; that all these theories are not supported by evidence because all she did was trying to assist the deceased and seeking help for him. Further submissions are that evidence did not show which knife was the murder weapon. Counsel took issue with the doctor who performed the post mortem by submitting that the doctor did not complete all the sections of the Post Mortem Form and did not measure the height of the deceased or the size of the wound as against the knife. He said the prosecution has failed to discharge the onus of establishing a prima facie case and urged the court to acquit the accused person.

I have read all the evidence of the 14 prosecution witnesses and considered the same. I have also given the submissions by both counsel due consideration. Mr. Kraido is correct that the case for the prosecution is based on circumstantial evidence. It is my duty as the trial court to determine at this stage of the trial whether the evidence establishes a prima facie case to warrant the placing of the accused person to her defence in lice with **Section 306 (2) Criminal Procedure Code** or not. My considered view is that the evidence so far presented meets the threshold in **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332**. Consequently, I find that the accused person has a case to answer and will be called upon to give her defence. This court therefore informs the accused person of her rights under section 306 (2) of the Criminal Procedure Code. Orders shall issue accordingly.

Dated, signed and delivered in open court this 18th August 2016.

S. N. Mutuku

Judge

In the presence of:

Ms Nduati for the prosecution

Mr. Kraido for the accused

Ms Jane Nambuye Manyonge, accused

Mr. Daniel Ngumbi, Court Clerk.