

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 37 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

KELVIN KOITALEL LEPESH.....ACCUSED

RULING

Kelvin Koitalel Lepesh, 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 between the night of 24th and 25th of April 2011 at Rangau area within Ongata Rongai Township in Kajiado County, he murdered Lucy Wairimu Rurigi. The accused pleaded not guilty to this charge.

The prosecution closed its case after calling twelve (12) witnesses. In its submissions, the prosecution told the court that it has established a *prima facie* case against the accused person by adducing evidence to show that the accused and the deceased lived together as man and wife; that on the night of 24th and 25th April 2011 the accused assaulted the deceased and took her to hospital; that the accused lied that they were brother and sister and were orphans; that he left the deceased in hospital and switched his phone off making it impossible to be reached on phone; that the deceased died in hospital due to the serious injuries she sustained as a result of the assault.

Mr. Ogado for the accused submitted that available evidence does not implicate the accused and that no witness saw the accused committing the offence; that there is no evidence as to how the offence was committed; that the ingredients of murder have not been proved and that by taking the deceased to hospital and telling the hospital staff that they were related and were orphans did not prove that the accused committed this offence.

Counsel further submitted that the prosecution must show that the circumstances of this offence are inconsistent with the innocence of the accused person and must show a chain of events linking the accused to the offence. Further submissions are that there is no proof that the bite marks found on the body of the deceased were made by the accused and that the prosecution failed to demonstrate what blunt object was used to cause the injuries on the deceased. He urged that the gaps left by the prosecution cannot be filled by the defence and asked the court to acquit the accused at this stage of the trial for no case to answer.

I have considered all the evidence. Majority of the prosecution witnesses testified to receiving information on deceased's admission to hospital. I have noted from the evidence of the doctor that the deceased had multiple human bite wounds on the face, lower back and right upper arm; bruises on both knees and injuries to the head. In his opinion the cause of death was head injury due to blunt trauma.

I have considered the evidence of Alexander Mutuya, PW6, a guard at Karen Hospital. He was present when the accused took the deceased to hospital and reported that they were brother and sister and were orphans. I have also considered the evidence of Carol Waithera Rurigi, PW1, and John Rurigi Thairu, PW2. These are mother and father of the deceased. They confirmed that the deceased lived with the accused as husband and wife and that the accused switched off his phone after leaving the deceased in hospital and could not be reached.

It is my view, after taking into account of this evidence, that a *prima facie* case has been established

against the accused person. I will and do hereby put him to his defence. I have complied with the provisions of section 306 (2) Criminal Procedure Code and informed the accused to address this court on the manner he wishes to tender his defence and whether he will be calling any witnesses. Orders shall issue accordingly.

Dated, signed and delivered this 16th day of November 2016.

S. N. Mutuku

Judge

In the presence of:

Ms Nduati for the prosecution

Mr. Ogado for the accused person

Mr. Kelvin Koitalel Lepesh, the accused person

Mr. Daniel Ngumbi, court clerk