

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 11 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

MILDRED ILARIO.....ACCUSED

RULING

1. The accused is charged with the offence of murder contrary to **section 203** as read with **Section 204** of the **Penal Code**. The particulars are that *on 17-05-2010 at Masinga Village within Shinovi sub location, North Butso Location in Kakamega Central District within Western Province murdered PATRICK POMBO MANG'OLI ("the deceased")*. He denied the charge. She was represented by Mr. Getanda.

2. In the course of the trial, which commenced on 01/02/2011 and ran up to 02/02/2015, the prosecution called Six (6) witnesses, at the end of which, the Defence counsel, Mr. Getanda filed written submissions and contended that the prosecution had not adduced sufficient evidence to warrant putting the accused on her defence, counsel urged this court to make a finding that the accused has no case to answer and acquit her under **Section 210** of the Criminal Procedure Code. The correct section is **306 (1)**. Mr. Ngetich for the Prosecution has relied on the evidence on record and maintained that a prima facie case has been established to warrant putting the accused person on her defence.

3. The evidence by prosecution witnesses in this case was taken by different Judges and this court only took the evidence of PW6 the Investigating Officer after complying with **Section 200 (3)** of the Criminal Procedure Code. This Court has carefully gone through the entire evidence adduced by the prosecution, and considered the submissions by both learned counsel. The prosecution by close of its case is required to establish a prima facie case. Such a case is one where, if the accused does not offer any defence then the court could convict on the evidence on record.

4. In my view the Prosecution evidence on record establishes a prima facie case against the accused .The incident herein occurred in the morning in broad daylight. Even though PW3 is a minor her evidence was consistent. She was with the deceased also a minor when the accused allegedly gave them porridge and took the deceased allegedly to give him medicine. She has described the medicine as yellow. PW1 confirms that he had in the house some pesticide which had been used. Later PW3 testified that the deceased started vomiting and crying. She also started crying until her uncle PW4 came and took the deceased to hospital where he was pronounced dead on arrival. There is also the postmortem report Pexhibit 1 that was produced by the Doctor PW2 and the Government Chemist Result Pexhibit 3 that show that the deceased was poisoned.

5. Taking everything into account, I have found and concluded that the prosecution has made a **prima facie** case to warrant putting the accused on her defence on the murder charge preferred against her.

6. Accordingly, I rule that the accused has a case to answer. The accused is put on her defence under **section 306 (2)** of the Criminal Procedure Code. The accused has the option of giving sworn evidence, in which case she will be subjected to cross-examination. In the alternative, she can give unsworn evidence in which case not questions will be put to her. The third option is for the accused to remain silent and let the court decide the case on the evidence that is before it. In each case, the accused is at liberty to call witnesses.

Delivered, dated and signed in open court at Kakamega this 19th day of February 2015

RUTH N. SITATI

J U D G E

In the presence of

Mr. Ngetich (present). for State

Mr. Getanda (present).. for Accused

Mr. F. Juma.....Court Assistant