

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 34 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

TIRUS MWANGI NJOROGE.....ACCUSED

RULING

The duty of this court at this stage of the trial is to determine whether the accused, Tirus Mwangi Njoroge, has a case to answer. Tirus is charged with murder contrary to section 203 read with section 204 of the Penal Code. It is alleged in the particulars of the offence that he murdered F.W. N. on 20th February 2013 in Githunguri District within Kiambu County. The victim was a young girl aged five (5) years.

The prosecution called a total of eleven (11) witnesses in support of its case. Three of the eleven witnesses testified before my sister judge, Honourable Lady Justice Florence Muchemi. When I took over the conduct of these proceedings, I took evidence of eight (8) witnesses. A trial within a trial was also held to determine the voluntariness and admissibility of a confessional statement made by the accused with the result that the statement was admitted in evidence.

I have reviewed all the evidence. Briefly, F. W. N. left home in the morning of 20th February 2013 to attend school at ***[particulars withheld]*** Primary School where she was in class one. She did not return home. Her schoolmate, C. W. W (PW4) who walked home with the victim, told the court that they parted ways with F. W. N who took the path towards her home. Her body was found the following day in the farm belonging to the grandmother of the accused. Her death was confirmed by Dr. Mungai (PW8) to have resulted from asphyxia due to strangulation. The deceased had also been sexually assaulted given the evidence of bruises on her genitalia. The accused was arrested in connection with this death and charged.

After careful analysis of all the evidence, it is my finding that the accused is implicated in this murder. At this of the trial the court is not required to give all the reasons for this finding as this will be done during the judgement stage. I find that the prosecution has established a prima facie case against the accused and consequently this court will, which I hereby do, put the accused on his defence. By virtue of section 306 (2) of the Criminal Procedure Code, this court hereby informs the accused of his rights to address the court in the manner he wishes to defend himself either by taking oath or otherwise and whether he intends to call any witnesses. Orders are made accordingly.

Dated, signed and delivered this 28th day of September 2015.

S. N. MUTUKU

JUDGE