

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO. 31 OF 2012

REPUBLIC.....PROSECUTION

VERSUS

GRACE NJERI MUNYI..... ACCUSED

RULING

This is a ruling on whether the accused person has a case to answer. She faces the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. She pleaded not guilty.

The counsel for the accused Mr. Momanyi submitted that the prosecution has not made up a *prima facie* case for the accused to be paced on her defence. He argued that malice aforethought was not proved and that the circumstances in which the deceased died did not directly point an accusing finger to the accused. The initial mental assessment report was negative and a positive one filed later declaring the accused mentally fit to plead. He urged the court to acquit the accused at this stage.

The State opposed the plea to find that the accused has no case to answer. The State relied on the mental assessment report of Dr. Thuo J.N. dated 21/9/2012 which found the accused fit to plead. The State argued that there is evidence that the accused denied the deceased who was her child food leading to death by starving. The interests of the child are protected under the Constitution and the parent is obligated to give the child his right.

I have perused the evidence of the prosecution witnesses and the submissions of the defence and the prosecution. I am not bound at this stage to give a detailed reasoning on the issues raised by the accused. If this is done at this stage, it is likely to pre-empt the defence of the accused.

I rely on the case of ***ANTHONY NJUE NJERU VS REPUBLIC [2008] eKLR*** where the Court of Appeal held:-

We wish to point out that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the Court concerned is acquitting the accused person.

in view of the above authority, I wish to state that the evidence on record is sufficient to support the charge. I find that the accused has a case to answer and is hereby called upon to make her defence.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF OCTOBER, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Nandwa for the State

Mr. Momanyi for the accused

Accused