



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE NO. 31 OF 2008

REPUBLIC STATE

AND

JOSEPH NDUNGU KIMANTHIACCUSED

RULING

1. The accused was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on 18th May 2008 at Kirinyaga village in Rongai sub location in Narumoru location in Nyeri North District of Central Province murdered MARIAM WANJIKU.
2. He pleaded not guilty and on behalf of the prosecution nine (9) witnesses testified. At the close of the prosecution case the parties made submissions under **Section 306** of **CPC** on whether the accused person should be put on his defence.

SUBMISSIONS

3. It was submitted by the prosecution that PW1, PW2, PW3, PW5 and PW6 testified that PW4's house was burnt on 18th May 2008 at night and that at that time PW4 was staying with the accused as husband and wife though the accused had another family. It was submitted by the prosecution that the accused on the material day demanded for food from the deceased's mother but none was availed thereby causing him to start abusing her before leaving.
4. That when the deceased returned he continued to abuse the deceased's mother and threatened that he was to do something either to her or Kihara whom he accused of having an affair with PW4 or he was to either commit suicide or burn the house. This caused PW4 to seek assistance from the accused's older son leaving the deceased sleeping in the bedroom.
5. It was further submitted that PW7 testified that the accused woke them up on 18th May 2008 and told them to accompany him to his home while hitting the house with firewood that he had collected from the fire place and when he attempted to go for the deceased the accused refused.
6. It was therefore submitted that the prosecution had demonstrated a *prima facie* case against the accused person from which he should be put on his defence.
7. On behalf of the accused it was submitted that the prosecution had failed to establish that it was indeed the accused person who set the dwelling house ablaze and if so whether the accused knew that the deceased was sleeping in the house. It was submitted that PW4's evidence was that the accused person left home to Saratine Bar and he came back very drunk and was unable to state whether he was the one

who lit the fire.

8. At this stage what the court is required to decide is whether the prosecution has established a *prima facie* case against the accused person on the standard set out in the case of **Ramanlal Trambaklal Bhatt -vs- Republic (1957) EA 335** where in the court stated:-

“i) The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.

ii) The question whether there is a case to answer cannot depend only on whether there is “some” evidence irrespective of the credibility or weight

iii) sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence.”

9. From the evidence of PW4 the mother of the deceased it is clear that the accused was placed at the scene of the fire. PW7 confirmed that the accused person asked them to leave the house and when he requested that he takes the deceased, the accused declined saying that boys to go with the father and girls to remain with their mother and PW9 and 10 confirmed that the deceased died in the fire.

10. I therefore find that the prosecution has established a *prima facie* case against the Accused and hereby put the same on his defence.

Signed and dated this day of 2014

J. WAKIAGA

JUDGE.

Delivered by Justice J. Ngaah on behalf of Justice Wakiaga this 18th day of December, 2014

J. NGAAH

JUDGE.

In the presence of:

----- for Appellant

----- for Respondent