



REPUBLIC OF KENYA

High Court at Nakuru

Murder Case 98 of 2009

REPUBLIC.....PROSECUTOR

VERSUS

LEAH WANGECI GITHINJI.....1ST ACCUSED

JANE NJERI MBUTHIA.....2ND ACCUSED

RULING

The accused persons, a mother and her daughter are jointly charged with the murder of the deceased, a son of the 2nd accused person and therefore a brother of the 1st accused person. It is alleged that on the night of 21st November, 2009 the deceased attacked the accused persons, who were forced to seek help and refuge in P.W.1 house's.

P.W.1, Francis Kigo Murango, P.W.2, Andrew Ngumba Njuguna, P.W.6 Wilson Kamau and P.W.7, Abraham Kariuki went to the accused person's house which they found bolted from inside. They heard loud bangs from inside. They were scared and retreated to their respective houses. They all confirmed that as they went to the accused persons' house, the accused persons remained in P.W.1's house. Because the accused persons had expressed fear of going to their house and after hearing the bangs, P.W.1 arranged for the two to spend the night in his house.

The next morning, the deceased was found dead with the door and window still bolted from inside. The body was removed after the house was accessed by breaking the window and unbolting the door. The body had neck injuries.

According to the doctor, death was caused by severe haemorrhage due to sharp force trauma through the front and back of the neck. The cut was in the form of incision. The accused persons were arrested and charged.

After the prosecution has closed its case, the court must determine whether the evidence discloses a *prima facie* case to warrant the calling upon the accused persons to make their defence. In other words, the court must consider whether the prosecution evidence is such that there can be a conviction if the accused persons elected not to call evidence in rebuttal. See **Ramanlal Trambaklal Bhatt V. Republic** (1957) EA 332.

There is no direct evidence as to how the deceased sustained the injuries which caused his death. What is not in dispute is that the accused persons left their house for fear of being attacked by the deceased. They spent the night in a neighbour's house. It is also in evidence that while the accused person

were away, neighbours heard heavy banging in the house where the deceased was. The windows and the door were bolted from inside.

The prosecution case is based on circumstantial evidence – that the accused persons were the last persons to be with the deceased.

In view of the fact that there was life in the house even after the accused persons had left it and given the heavy banging in the house, it cannot be said that the circumstantial evidence points irresistibly to the guilt of the accused persons. There were factors that cannot be explained. Who was banging, what was being banged, how and with what weapon was the deceased person's throat cut?

For these reasons, I find that the prosecution has not established a *prima facie* case against the accused persons. They are acquitted of the charges of murder contrary to **Section 203** as read with **Section 204** of the **Criminal Procedure Code**. They are set at liberty unless lawfully held.

Dated and Signed at Nakuru this 4th day of February, 2013.

W. OUKO
JUDGE

Dated, Signed and Delivered at Nakuru this 13th day of February, 2013. by Hon. Justice M. J. Anyara Emukule.

JUDGE