



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL CASE NO. 15 OF 2004**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**BENARD IMBIRU MISIGO ..... ACCUSED**

**RULING ON A CASE TO ANSWER**

The accused, Benard Imbiru Misigo is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars of the charge are that on the 15th day of February, 2004 at Kipture Village in Nandi North District within the Rift Valley Province, murdered Sarah S'eanzu.

The standard of proof as to whether the prosecution has established a prima facie case was laid down in the celebrated case of **RAMANLAL TRAMBAKLAL BHATT -VS- REPUBLIC (1957) E.A. 332** as follows:-

**"(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 its credibility or weight 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."**

And in **R -VS- JAGJIVAN M. PATEL AND OTHERS 1, TLR, 85** the learned Judge said;

**"All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply, its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a border line case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion."**

I took over the conduct of this case from the evidence of PW6. Effectively I only heard the evidence of both PW6 and PW7 who are the doctors who produced the deceased's Post Mortem Report and the Investigating Officer.

I have in addition, had the advantage of reading the typed proceedings of the evidence of other prosecution witnesses. PW1 who is the key prosecution witness testified that she heard screams coming from the house of the accused. That she ran towards the house and as she approached the house saw the accused run out and the deceased lying down near the door. She said she ran to call her aunt, Sally. That after 30 minutes when she returned to the scene, she saw the accused with cut wounds on the legs and the deceased was lying in the house. The accused was also holding a panga.

PW2, in corroborating the testimony of PW1 confirmed seeing blood stains in the house of the accused. She said both the accused and the deceased were lying down. That the deceased had cuts on the forehead, throat and across the eyes and she was covered with a blanket as she lay dead.

The Post Mortem report was produced by PW6. The injuries observed by the witness were consistent with the evidence of PW1. Other witnesses who visited the scene confirmed the deceased was found dead in the house of the accused.

Prima facie therefore, the prosecution has demonstrated that the accused has a case to answer and I accordingly put him on his defence.

**DATED and DELIVERED at ELDORET this 19th day of November, 2013.**

**G. W. NGENYE – MACHARIA**

**JUDGE**

Mr. Miyianda holding brief for Chepkwony for the Accused

Mr. Omwega for the State