



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
Criminal Case 108 of 2008**

**REPUBLIC.....PROSECUTOR
VERSUS
MIRIAM ATIENO..... ACCUSED**

R U L I N G

The accused, MIRIAM ATIENO, was charged with the murder of a baby named AIDEN KOWITI.

In the Information through which these proceedings were commenced, the prosecution asserted that the incident giving rise to the charge herein, took place at Donholm Estate, Nairobi, on the night of 13th November, 2008.

By the time the prosecution closed its case, five witnesses had testified. At this stage of the trial, the court is required to ascertain whether or not the evidence on record established a prima facie case, which would require the accused to be placed on her defence.

In my understanding of the law, the accused cannot be put on her defence unless the evidence already adduced would be sufficient to result in her conviction, unless she was to put forward a defence thereto.

In this case, it has been demonstrated that baby Aiden Kowiti is dead. The pathologist who conducted the post mortem examination told the court that the cause of death was a head injury due to blunt force trauma.

The baby died during the night of 13th November 2008.

At the time of his death, he was alone with the accused, inside PW 1's house. PW 1, Christine Achieng Odeph, is the mother to the baby. She left the baby with the accused, at about 5.00p.m.

It was her testimony that she did make calls to the accused, on several occasions that night. On each of the occasions, the accused assured the mother of the baby that all was well.

Yet, when the mother eventually arrived back home, at about 4.00a.m., the baby was dead.

Meanwhile, the accused was nowhere near the scene. She had, reportedly, left to go to the shops, briefly, at about 11.00p.m.

As the baby was fine when his mother left him with the accused at 5.00p.m.; yet by 4.00a.m. he was dead due to blunt force being applied to his head; and as the accused was responsible for looking after the said baby at the time when the said force was applied to the head of the baby, I find that the prosecution has established a prima facie case to warrant the accused being placed on her defence.

Accordingly, the accused is now hereby put on her defence.

Dated, Signed and Delivered at Nairobi, this 10th day of May, 2010.

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FRED A. OCHIENG
JUDGE