

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CRIMINAL CASE 17 OF 2004

REPUBLIC.....PROSECUTOR

Versus

SARAH WANJIKU KAMAU.....ACCUSED

RULING

The prosecution's case has been closed and the question at this stage under *Section 306* of the Criminal Procedure Code is whether this court considers that there is sufficient evidence for the Accused person to be put on her own defence.

In other words, has the prosecution established a *prima facie* case against the Accused person?

A *prima facie* case cannot exist where there is contradiction because in such a situation, the court cannot come out with one story to confront the Accused with.

It is the duty of the prosecution, and not the duty of the court, to prove its case against the Accused beyond any reasonable doubt and that standard cannot be achieved where the prosecution's case has contradictory evidence.

The evidence of P.W.8: John Kamau Njoroge, completely destroys the prosecution's case. He is the husband of the Accused and the father of the deceased child and has told the court that the Accused has not committed and could not have committed this offence. That is evidence adduced by a prosecution witness. Had that evidence been adduced by the Accused, the position may have been different. But when such evidence is on the side of the prosecution, how does the court treat it unless the court plays part of the prosecution which the court, as an impartial arbitor, should not play.

In the circumstances therefore, I do not find a *prima facie* case against the Accused – and I therefore do not find her guilty and do hereby acquit her.

She be released forthwith unless lawfully detained in some other cause.

Assessors as well as civilian witnesses who have given evidence in this case be paid their respective allowances.

Thanks the Assessors who have taken their time listening to the evidence adduced in this case up to the end.

Dated this 17th day of February 2005.

J. M. KHAMONI

JUDGE