



REPUBLIC OF KENYA



**Republic v Nyamesa (Criminal Case E010 of 2022)  
[2023] KEHC 2424 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2424 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E010 OF 2022  
TM MATHEKA, J  
MARCH 22, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GRACE KERUBO NYAMESA ..... ACCUSED**

**RULING**

1. The accused Grace Kerubo Nyamesa is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. It is alleged that on February 5, 2022 she murdered Ireneous Simiyu Makomere.
2. The deceased was the step son of the accused and one Moses Simiyu.
3. On the material date she and her husband requested the neighbours to drive them to hospital because the child was sick.
4. The neighbours drove them to Nairobi Women Hospital (Nakuru) where the child was declared dead upon arrival. The doctor who examined the body Doctor Njoroge Ruku noticed that the body had injuries and called the police.
5. Following investigations, the couple's six-year-old child was interrogated, a postmortem was conducted and the cause of death was found to be blunt and sharp trauma, chronic assault to the body. The accused was charged with murder.
6. I have carefully considered the submissions by counsel Mr Mongeri on no case to answer. At this stage the only issue for determination is whether there is a prima facie case to warrant accused being put on the defence. (see *Bhatt v Republic*).
7. The prosecution has established death of the accused, through an unnatural cause. There is evidence that the child was punished by the mother, and the father through beating – there is also evidence that



the child shitted on himself and was punished by the accused. I however do not see evidence of malice afterthought.

8. I am of the view that the prosecution has established a prima facie case of manslaughter contrary to section 202 as read with section 206 of the [Penal Code](#). The accused person will be placed on her defence for the charge of manslaughter. In line with s 306(2) of the [Criminal Procedure Code](#)

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF MARCH 2023**

**MUMBUA T MATHEKA**

**JUDGE**

CA Wanjohi

Ms. Murunga for State

Mr Mongeri for the Accused

Accused Present

