



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njoroge & 2 others (Criminal Case 13 of 2018)
[2023] KEHC 17315 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 13 OF 2018**

JM NGUGI, J

MAY 12, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL NDUNGU NJOROGE 1ST ACCUSED

JOYCE NJAMBI MUNGAI 2ND ACCUSED

WILSON MWANGI MUNYUA 3RD ACCUSED

RULING

1. Samuel Ndung’u Njoroge; Joyce Njambi Mungai; and Wilson Mwangi Munyua (the “Accused Persons”) are charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. They are jointly accused of the murder of Lucy Njambi Nyagiko (“Deceased”) on January 24, 2018 at Kiambu sub-county within Kiambu County.
2. The Prosecution called 38 witnesses to prove its case. The prosecution theory is that the 1st Accused Person, who had married the Deceased, a much younger woman, as a second wife, was offended when she chose to leave him and moved out of their home. The theory runs that the 1st Accused Person, obsessed with the Deceased and afraid to lose her, suspected that she was having a relationship with another (younger) man. According to the Prosecution, when the 1st Accused Person’s efforts to win the Deceased back failed, he decided to murder her because he would rather have her dead than allow her “to sleep with uncircumcised men.” The theory is that the 1st Accused Person planned for the Deceased’s murder with the help of the 2nd and 3rd Accused Persons and a fourth accomplice who was never apprehended. The Prosecution claims that the 1st Accused Person lured the Deceased into his car and then forcefully drove her to Sasini Coffee Estate where one of the accomplices raped her before another of the accomplices doused her with sulfuric acid. The Deceased died a day later from the burns



caused by the acid. The Prosecution relied on dying declaration evidence as well as circumstantial evidence both of which, it claims, connect the Accused Persons to the murder.

3. At this point in the trial, with the Prosecution having closed its case, the Court is required to determine if the Prosecution has established a prima facie case sufficient to put the Accused Person on his defence. The test to be utilized is the famous one stated in *Bhatt vs R* [1957] EA 332: whether, as a matter of law – without taking any conclusive view of the credibility and probative value of the evidence presented – the Prosecution has adduced reasonable sufficient evidence of the matter in respect of which it has the burden of proof. Reasonable sufficient evidence is one which a reasonable tribunal could convict.
4. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I conclude that the state of the evidence called by the Prosecution, taken as a whole, is so woefully unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not met here, since there is some evidence which, if accepted and “taken at its highest”, would entitle the Court to convict. At this point, the less I say, the better.
5. Taking this test and standard into consideration, the Prosecution has placed enough material to make this a fit case to require the Accused Person to respond to the evidence adduced.
6. Consequently, the Court finds that all the three Accused Persons have a case to answer and puts all three on their defence. The case shall be set down for defence hearing.

DATED AND DELIVERED AT KIAMBU THIS 12TH DAY OF MAY, 2023.

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JOEL NGUGI

JUDGE

