



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 6 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

SIMON MURAYA GACHAU.....ACCUSED

RULING

1. The accused is charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The particulars are that on 29th August 2015 at Umbui village, Kanjama Location, Mathioya Sub-County within Muran'ga County, he murdered *Cecelia Wambui Wahome*.
3. He pleaded *not guilty*. The prosecution only called *seven* witnesses.
4. I have paid heed to the evidence of the key witnesses. For instance, PW3 and PW5 visited the scene inside the house of the accused. Blood was leaking outside. They saw a bloodstained fork jembe next to the body of the deceased.
5. From the Report by the Government analyst produced by PW7, "*there are 99.99% more chances that the donor of the DNA profile generated from the bloodstains on the fork jembe (item F) is the biological father to the donor of DNA profile generated from the blood sample (item B) indicated as of deceased's son*".
6. PW4 is the father of the accused. He was declared a hostile witness for departing from his statement to the police. His material evidence was that the accused informed him he "*had killed and left*". When PW4 went to the accused's house, he found a trail of blood. He said the accused and deceased had cohabited for three months. He reported the matter to the police.
7. There is then the evidence of PW6 who took the accused's statement under inquiry and the Post Mortem Form (exhibit 4).
8. The accused was arrested on 3rd March 2017 at Imara Daima, Nairobi, where he had been detained by the police in the course of investigations into an unrelated offence.
9. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of *all the seven* witnesses, I find that the Republic has established a *prima facie* case against the accused.
10. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place the accused on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 8TH DAY OF JULY 2021.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

The accused.

Ms. Waititu holding brief for Mr. Kagwi for the accused.

Mr. Waweru for the Republic.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.