



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL CASE NO. 13 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

ISAIAH GITAU MBURU.....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 11th August 2013 at Gatumbo village in Murang'a South District within Murang'a County, he murdered *Morrison Mburu Ng'ang'a*.
3. He pleaded *not guilty*. The prosecution called *eight* witnesses.
4. Does the evidence disclose a *prima facie* case sufficient to place the accused on his defence? Learned counsel for the accused filed submissions on 12th August 2021. In his view, the accused should be acquitted at this stage. The Republic opted *not* to file submissions.
5. I have paid close attention to the evidence of PW1. She is the *mother* of the accused. The deceased is her *husband*. She testified that on the material night, the accused quarreled with her over food. The accused stepped out and returned with a *rungu* or a *panga* and either hit her or cut her on the forehead. When the deceased enquired about the matter, the accused also cut him on the head. I am alive that her version of events and her two statements to the police are in issue.
6. But there is also the evidence of PW2, who found PW1 and the deceased injured and bleeding from their heads. According to the postmortem Report produced by PW8 under section 77 of the **Evidence Act** the deceased died from "*severe head injury due to blunt force injuries consistent with assault*".
7. 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 *eight* witnesses, I find that the Republic has established a *prima facie* case against the accused.
8. 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 12TH DAY OF OCTOBER 2021.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

The accused.

Mr. J. Kagwi for the accused.

Ms. A. Gakumu for the Republic.

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