

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 23 OF 2012

REPUBLIC

VERSUS

PETER GATHOGO GITHUI.....ACCUSED

RULING

1. The accused Peter Gathogo Githui was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; he is accused of having murdered Nelson Warui Muzee on the 8th day of July, 2012 at Maria Village along Ngorano Kabiruni Road in Mathira sub-county within Nyeri County; the accused had pleaded not guilty to the charge;

2. At the hearing hereof the accused was represented by Learned Counsel Mr. Njuguna whereas Mrs. Gicheha was the Prosecuting Counsel for the State; the prosecution called a total of six (6) witnesses in support of its case; at the close of the prosecution case counsel for the accused was invited to make submissions as to whether the prosecution had made out a case to require the accused to be called upon to defend himself; Prosecuting Counsel for the State relied on the evidence on record to support its case and submitted that the prosecution had made out a prima facie case against the accused and urged the court to put the accused on his defence; counsel for the accused filed written submissions; hereunder is a summation of the submissions made on behalf of the accused;

ACCUSED'S SUBMISSIONS

3. The accused submitted that the prosecution has not sufficiently established a *prima facie* case to warrant the accused to be placed on his defence; he sought for an acquittal under section 306 (1) of the Criminal Procedure Code; the evidence of PW1 was contradictory; she stated that she found nobody at the scene other than the deceased and the accused; in her statement however she stated that one Mitambo was there; this witness also stated that the accused stole her phone but did not prove ownership of the said phone; she even did not report the theft to the police;

4. PW4 could not have seen the accused's face at night; nobody saw the accused armed with a weapon; the evidence of both PW2 and PW4 did not implicate the accused; PW5 could not take the alleged confession as he lacked capacity according to Section 25A (1) and (2) of the Evidence Act and the Evidence (Out of Court Confessions) Rules 2009; the said confession was not even produced in evidence;

5. PW5 and PW6 in their statements did not indicate that they went to the accused's house to search for the murder weapon; it would have been different if PW5 did not bangle the investigations; the evidence produced falls far too short from the threshold required;

STATE'S SUBMISSIONS

6. The State relied on the evidence on record to support its case; and submitted that the prosecution had made out a prima facie case against the accused and urged the court to put the accused on his defence;

ANALYSIS

7. The evidence of the prosecution witnesses **PW1** and **PW3** placed the accused person at the scene of the crime on that fateful night; he was heard quarrelling with the deceased and shouting out utterances that someone must die from the house of **PW1** as he had been falsely accused of having stolen a cell phone from **PW1**;

8. After perusal of the evidence on record in particular that of **PW1** and **PW3** this court is satisfied that even though the prosecution is relying on circumstantial evidence, regardless of its weight, there is a scintilla of evidence that warrants putting the accused person on his defence; reference is made to the case of **Ramanlal Bhatt vs Republic (1957) EA**.

9. For the foregoing reason this court finds that the prosecution has made out a prima facie case against the accused that warrants him to be placed on his defence to answer to the charges; his rights and options will be put to him before he presents his defence;

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 13th day of February, 2020.

HON.A.MSHILA

JUDGE