



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 11 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

LILIAN SUNDAY WANYAMA.....ACCUSED

RULING

1. Lilian Sunday Wanyama is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 19th day of June 2019, at Bumulimba village, Samia sub County within Busia County, she murdered Danstan Francis Ouma.
3. The evidence that was adduced by Wilson Osare (PW4), painted a picture of a dysfunctional couple. He testified of how the accused declined to make tea for the deceased that morning and told the deceased to go and make it for himself, which he did. Later that evening, he testified of altercations where the deceased alleged that the accused was moving with standard three boys. He also gave an impression that the accused habitually took alcohol. This allegation was supported by the evidence of Geoffrey Jacob Agoyi (PW5). This witness was the couple's neighbor. He confirmed that both the deceased and the accused used to take alcohol and also used to quarrel frequently.
4. Wilson Osare (PW4) who was a grandson of the deceased was the only eye witness to the unfortunate incident. He testified that after the accused had made the evening meal, she went outside and slept under a guava tree. The deceased followed her there and told him (PW4) not to go there. He heard his grandfather slap the accused and told her that she was moving with standard three boys. He then heard somebody groaning. Lilian, the accused, asked him to take some flour. The accused put the flour into the nostrils of the deceased in a bid to revive him.
5. The medical evidence that was tendered in court by Dr. Stephen Angira (PW1) was that the body of the deceased did not have any external injuries. Internally, there was subdural haemorrhage. He said this was not caused externally and opined that it could be as a result of a rupture caused by age and other existing factors.
6. The deceased was a retired teacher meaning he was over sixty years which is the mandatory retirement age. The evidence of Geoffrey Jacob Agoyi (PW5) was that the deceased was both diabetic and hypertensive.
7. According to the investigating officer, corporal Pius Rono (PW6), the accused was charged for she was the last person with the deceased. Did the prosecution establish a *prima facie case*?
8. What is a *prima facie case*? In the **Black's Law Dictionary, 10th Edition** *prima facie case* is defined as follows:

***Prima facie case.* (1805) 1. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.**
9. The Court of appeal in the case of **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, defined *prima facie case* as follows:

It is may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.
10. Article 50 (2) (i) of the Constitution of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused opts to exercise her constitutional right hereinabove stated, I cannot enter a conviction based on the evidence on record. This therefore means that the prosecution has failed to establish a prima facie case against her. I accordingly acquit her of the offence of murder under section 306 (1) of the Criminal Procedure Code.

DELIVERED and SIGNED at BUSIA this 15th day of July, 2020

KIARIE WAWERU KIARIE

JUDGE