



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL CASE NO. 26 OF 2018**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**A M Alias J N.....ACCUSED**

**R U L I N G**

1. A M Alias J N (herein referred to as the accused) is charged with murder contrary to Section 203 as read with Section 204 of the Penal code. The particulars of the offence are that on the 30<sup>th</sup> June, 2018 at [ village, Emuhaya Sub-county within Vihiga County he murdered TO (herein referred to as the deceased).
2. The prosecution case is that the accused and the deceased were living together as husband and wife. WTO PW1 was their neighbour.
3. That on the 29/5/18 at 10 p.m. Mr. Otieno (PW1) was in his house when he heard shouts outside his home. He woke up and went to the road that passes outside his home. He found the accused beating up his wife, the deceased. The deceased was lying on the ground naked. The accused was stepping on her head with one foot. PW1 pleaded with him to take her home. The accused carried the deceased towards his home. PW1 went back to his house.
4. On the following morning PW1 called the mother to the deceased PW2 and asked her to go and check on her daughter. PW2 and her son PW5 went to the home of the accused. They found the deceased dead in the house of the accused. The body was lying on a bed in the house. The accused was nowhere to be seen. They reported to the area Assistant Chief PW3. A report was received at Luanda Police Station. C.I. Dedan Kamotho PW7 went to the scene and collected the body and took it to Coptic Hospital Mortuary.
5. On the 2/6/18 the accused was arrested by members of the public and taken to Bukura Police Patrol Base. C. I. Dedan went and picked him. On the 5/6/18 Dr. Muchana PW8 conducted a postmortem on the body of the deceased. He found it with a deep laceration on the left side of the head, minor bruises on the right forehead and extensive bruise on the right side of the hip. Internally the brain was swollen with bleeding below the covering of the brain. The doctor formed the opinion that the cause of death was due to severe head injury secondary to fixed force trauma following assault.
6. Cpl. Gilbert Cheruiyot PW9 investigated the case and charged the accused with the offence. During the hearing Dr. Muchana produced the postmortem report as exhibit, P.Ex.1.
7. At the close of the prosecution case the advocate for the accused Mr. Matete did not make any submissions. The court is at this stage required to determine whether or not the prosecution has established a prima facie case against the accused.
8. A prima facie case, it has been stated, is:-

*“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 - See **Ramanlal Trambaklal Bhatt – Vs – Republic ( 1957) EA332.***

9. WT PW1 states that he witnessed the accused beating the deceased on the night before the deceased was found dead in the accused's house on the following day. The doctor PW8 found the cause of death to have arisen from assault. In face of the above said evidence, I find that the prosecution has established a prima facie case against the accused as to require him to be placed on his defence. In the premises, the accused has a case to answer and is accordingly placed to his defence.

**Delivered, dated and signed in open court at Kakamega this 16<sup>th</sup> day of May, 2019.**

**J. NJAGI**

**JUDGE**

In the presence of:

No appearance for accused

Mr. Juma for State

Accused - present

Court Assistant - George