



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 21 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

1. VINCENT JUMA MURUKA

2. MARY OLWENDO OMUNJI.....ACCUSED

RULING

1. **Vincent Juma Muruka** and **Mary Olwendo Omunji** are 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 night of 27<sup>th</sup> and 28<sup>th</sup> day of August 2018, at **Bwakama village** in **Samia** Sub-county of **Busia** County, murdered **Benson Juma Muruka**.

3. The prosecution case was that when the deceased was found dead in his house, the accused were connected to his death by reasons of earlier disagreements.

4. After the close of the prosecution case, the only issue for determination is whether a *prima facie* case has been established against the accused. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) E.A. 332 at 335**, defined a *prima facie* case in the following terms:

**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.**

This is what is going to guide me in this case in finding whether the prosecution has established a case for the accused to be called upon to tender his defence.

5. There is no doubt from the evidence on record that the deceased herein was killed. The only question is whether there was evidence that linked either accused to his death.

6. Johnstone Bwire (PW3) testified that on 26<sup>th</sup> August 2018 he was in the home of the deceased. He witnessed a quarrel between Dennis Boaz Muruka, the two accused persons and the deceased. He went away and on 27<sup>th</sup> August 2018 at 1 p.m. he saw the deceased and they exchanged greetings.

7. Dennis Boaz Muruka (PW1) in his evidence claimed of a quarrel between the first accused and the deceased. The first accused warned the deceased that if he was not careful he was going to kill him. He did not testify about the quarrel between himself and the deceased as testified to by Johnstone Bwire (PW3).

8. The evidence against the second accused was the allegation that of Johnstone Bwire (PW3) who said that he witnessed a quarrel which involved her and Dennis Boaz Muruka (PW1) against the deceased. The other evidence was that she had separated with the deceased and were staying separately.

9. Quarrels in any home may not be viewed as out normal unless of course there is evidence to show that they degenerated to violence. In this case there was no evidence to connect the alleged quarrels to the murder of the deceased. The evidence against both accused is mere suspicion. In the case of **Sawe vs. Republic[2003] KLR 354** the Court of Appeal held inter alia:

**Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.**

In the instant case it would appear that the accused were charged on the basis of suspicion.

10. From the foregoing analysis of evidence on record, I find that the prosecution has failed to establish a *prima facie* case against the accused. I accordingly acquit each one of them of the offence of murder under section 306 (1) of the Criminal Procedure Code. Each is set at liberty unless if he is otherwise lawfully held.

**DELIVERED and SIGNED at BUSIA this 14<sup>th</sup> day of June, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**