



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 38 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MSW.....ACCUSED**

**RULING**

MSW is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of this offence state that on the 22<sup>nd</sup> day of July 2017 at Shungoini Village in Riruta Satellite within Nairobi County he murdered MNW. The accused pleaded not guilty to this charge.

After calling a total of seven (7) witnesses the prosecution closed its case. The accused through his counsel Mr. Businge was directed to file written submissions on 16<sup>th</sup> July 2019 upon the request of Mr. Businge to do. However, no submissions have been filed to date. At the time of writing this ruling in August, I have confirmed that there are no submissions in the file.

The evidence against the accused is straight forward. He was married, or he lived with one LM as man and wife. They had a baby girl, MN now deceased. She was aged about 9 months. Their relationship was not a peaceful one. M is said to have left the matrimonial home after a domestic dispute. She left the baby with the accused on 19<sup>th</sup> July 2019. Evidence shows that EW (PW3) sister to the accused used to assist his brother in taking care of the baby. It was during one of the occasions when the accused was left taking care of the baby that the baby died. Information about the death of the baby reached E who called another brother of hers EW. Both went to the home of the accused. They found the body of the baby inside the accused's house. Accused was at large. They reported the matter to the police who collected the body from the scene.

The accused was found at Ngong Forest hiding in circumstances that seemed suspicious. He was taken to Karen Police Station where he was received by SGT Dalmas Wambua (PW7). He was handed over to the police at Riruta Police Station. After investigations were completed, he was charged with this offence. The results from the post mortem conducted by Dr. Charles Muturi (PW6) on the body of the deceased revealed that the cause of death was due to smothering.

I have read the evidence and considered the same carefully. It is clear to me that the evidence against the accused is circumstantial. However, I am satisfied that the evidence against the accused establishes a prima facie case against him to warrant his being required to defend himself. In compliance with Section 306 (2) of the Criminal Procedure Code therefore, I hereby find that the accused has a case to answer and place him on his defence. I hereby inform him of his right to address the court in the manner in which he intends to give his evidence in defence and whether he has any witnesses to call. Orders shall issue accordingly.

**Dated, delivered and signed this 19<sup>th</sup> day of September 2019.**

**S. N. Mutuku**

**Judge**