



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 1 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JENNIFER CHEPKORIR KIMOI.....ACCUSED

RULING

[1] The accused person herein, **Jennifer Chepkorir Kimoi**, was arraigned before the Court, on the basis of the Information dated **7 January 2014**, whereby she was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. The particulars in support of that charge were that on the **5th day of January 2014** at Gitau Farm Village, Kipkabus Location in Eldoret East District within Uasin Gishu County, she murdered **Bentine Chemutai**. As the accused denied that charge, evidence was led by the Prosecution in proof thereof, at the close of which Counsel for the Defence urged the Court to make a finding that no *prima facie* case has been established to warrant the placement of the accused person on her defence, and acquit her at this stage.

[2] The charge was laid under **Section 203** of the **Penal Code, Chapter 63** of the **Laws of Kenya**, the essence of which is that any person who, of malice aforethought, causes the death of another person by an unlawful act or omission would be guilty of murder. Thus, the ingredients that the Prosecution needed to show, albeit on a *prima facie* basis are: the fact of death; that the death was caused by the Accused by an unlawful act or omission; and malice aforethought on the part of the Accused Person.

[3] The Prosecution called 8 witnesses herein, the first of whom was the father of the deceased, **Wilson Cheruiyot Chebii (PW1)**. His evidence was that, at about 2.00 p.m. he was at the farm when he received a call from the Village Elder, **William Tarus**, requiring him to go home as a matter of urgency. He immediately went home and was there told that his daughter, **Chemutai**, had died; and that her dead body had been found in the house of the accused person. He then proceeded to the scene and found the dead body of his daughter lying on the floor, covered with a blanket. He noted that there was some blood on the legs and some ash sprinkled on the floor around the body. He further stated that, as the Police were already at the scene, they took away the body after he confirmed the identity of the deceased.

[4] The first person to stumble upon the body of the deceased was **Kipkemei Komen (PW2)**, a juvenile aged about 14 years. He told the Court that, on the morning of **5 January 2014** at about 9.00 a.m., he was sent by his mother, **Maureen Kiprop**, to go and collect a basin from **Brownie**, which he explained was the nickname by which the accused was known in the village. He did not find the accused at home; and that a neighbor of hers encouraged him to feel free to enter the house and take whatever he required. He further stated that, upon entering the house, he found somebody lying on the floor, covered with a blanket. He did not check to see who the person was or what may have happened to the person. **PW2** added that he left the house immediately; and without the basin he had been sent to collect. That after informing the neighbor of the accused about what he had seen, he went back home.

[5] **Rose Kipkoskei Kipsang (PW3)**, a resident of **Kipkabus** told the Court that she was at home on **5 January 2014** at about 10.00 a.m. when her neighbor, **Dorcias**, visited her and informed her that there was a dead body in the house of the accused; and that he had received the information from **PW2**. **PW3** stated that he advised **Dorcias** to report the matter to the Village Elder; and that she accompanied **Dorcias** and together they reported the matter to the Village Elder, a fact confirmed by the Village Elder, **William Kipkoech Mandago (PW6)**. After visiting the scene, the **PW6**, in the company of **Dorcias**, went to the Police Station and reported the incident; whereupon police officers visited the scene and collected the body. **PW4** on his part testified that he also received a report of the death in his capacity as a Village Elder; and that he looked for the accused person with the help of a *boda boda* operator, **Jackson Chasava (PW5)**, and persuaded her to accompany them to the Police Station. He was accordingly handed over the accused to the Police to assist with investigations.

[6] **Dr. David Chumba (PW7)**, a Pathologist based at Moi University School of Medicine, testified that he performed an autopsy on the body of the deceased, **Bentine Chemutai**, on the **9 January 2014**; and that upon examining the body he found that there was a rupture of the external genitalia going through the bladder up to the abdomen; and the uterus contained a dead female foetus which was about 5 months old. He added that the body of the deceased was bloodless. He thus formed the opinion that the cause of death of the deceased was severe haemorrhage due to attempted abortion by a blunt object. He produced the Postmortem Form that he filled and signed as **the Prosecution's Exhibit 1** herein.

[7] The last witness, **PC (W) Nancy Makokha (PW8)**, testified on behalf of the Investigating officer, **Sgt Wafula**, to the effect that the accused was handed over to **Sgt Wafula** on **5 January 2014** on allegations that he had helped procure an abortion for the deceased, who died in the process, while in the house of the accused person. According to her, she received the file while the matter was pending before court and that her duty was limited to ensuring the witnesses were bonded to attend court.

[8] In his written submissions filed herein on **21 August 2019**, **Mr. Miyienda**, Learned Counsel for the accused person, took the position that the Prosecution had failed to prove its case to the requisite standard; pointing out that there was no eye witness to either link the accused with the death of the deceased or to demonstrate that she had anything to do with the act of assisting the deceased to procure an abortion. Counsel further urged the Court to find that the Prosecution called witnesses in a selective manner, and therefore deliberately failed to call a number of crucial witnesses, such as the mother and sisters of the deceased who were with her at the material time. He also urged the Court to note that **Dorcias**, who was mentioned by **PW2**, as well as other neighbours of the accused were not called as witnesses in spite of the pertinent roles they played. Counsel accordingly urged the Court to draw an inference that those are the witnesses who participated in the criminal acts leading to the death of the deceased. He relied on **Bhatt vs. Republic [1957] EA 332** to support his submission that it was not enough that the deceased's dead body was found in the house of the accused person. He made reference to what the accused stated under inquiry, explaining how the deceased came to be in her house on the fateful day; but those are assertions the Court is not privy to, granted that the statement under inquiry was not produced as an exhibit herein by the Prosecution.

[9] Upon a careful consideration of the evidence adduced herein, there is, *prima facie* proof of death; and the fact that the act causing the death of the deceased, **Bentine Chemutai**, was unlawful. There is likewise credible circumstantial evidence to connect the accused with that unlawful act. **Section 206** of the **Penal Code**, **Chapter 63** of the **Laws of Kenya**, is explicit that:

Malice aforethought shall be deemed to be established by the evidence proving any one or more of the following circumstances—

a. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

b. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

c. An intent to commit a felony;

d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

(emphasis added)

[10] Accordingly, I am satisfied that a *prima facie* case has been established by the Prosecution to warrant an answer by the accused person. (see **Ramanlal Trambaklal Bhatt -Vs- Republic [1957] EA 332**).

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 1ST DAY OF OCTOBER, 2019

OLGA SEWE

JUDGE