



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 4 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

GRACE MOKEIRA ORURA.....1ST ACCUSED

EZNA KEMUNTO.....2ND ACCUSED

RULING ON A CASE TO ANSWER

1. The accused persons herein, **GRACE MOKEIRA ORURA** and **EZNA KEMUNTO ORURA** are mother and daughter respectively. They face the charge of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are that between 21st and 22nd February 2017, at Nyamesocho Sub-location in Masaba-South Sub-county within Kisii County in the Republic of Kenya jointly murdered **ELIJAH ORURA MASESE**.

2. At the trial, the prosecution presented the evidence of 6 witnesses in support of its case and the case is now before me for a ruling on whether or not the accused persons have a case to answer under Section 306 of the Criminal Procedure Code.

3. A brief summary of the evidence tendered by the prosecution witness was as follows:

4. PW1 S.M. (*particulars withheld*) was a minor and is the granddaughter of the deceased and the 1st accused. Her testimony was that on the night in question, the deceased was drunk and she witnessed the 1st accused wrestle him to the ground before she started beating him with a stick and the 2nd accused joined the fray by beating the deceased with split wood.

5. **PW2 Charles Marube Masese** visited the home of the deceased on the morning of 22nd February 2017 and found him lying in pain in the sitting room. He stated that the deceased was badly injured and requested him to escort him to hospital but that he unfortunately died on the way to hospital.

6. **PW3 Charles Omwoyo Masese** heard a commotion from the home of the deceased on the material night and that he noted that the deceased and the 1st accused were engaged in as they used to fight a lot. He did not intervene in the fight but on the following day he got word that the deceased was critically injured. The deceased unfortunately succumbed to his injuries as he was on his way to hospital.

7. **PW4 Lucas Elijah** learnt that the deceased had been assaulted and made efforts to take him to hospital in the company of PW2 and PW3.

8. **PW5 was Julius Machogu**, the assistant Chief of Bagungu Sub-location. On 22nd February 2017 he received a report from the 1st accused regarding a disagreement that she had with the deceased the previous night. He later received news that the deceased had been murdered.

9. **PW6 P.C. Harun Muriuki** was the investigating officer. He visited the deceased home after the incident, arrested the suspects and opened charges against them.

10. In determining whether or not the accused person has a case to answer, the court must establish if a prima facie case has been made out against the accused to warrant his/her being placed on her defence.

11. In the case of **Ramanlal Trambaklal Bhatt -Vs- Republic (1957) E.A. 332** the court held:

"(i) The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.

(ii) The question whether there is a case to answer cannot depend only on whether there is 'some' evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence."

12. In the instant case, without saying much at this stage, I find that the prosecution established a prima facie case against the accused persons that would warrant their being placed on their defence. There was sufficient evidence especially from PW1, pointing towards their possible involvement in the death of the deceased.

13. I therefore find that the prosecution has established a prima facie case against the accused persons to warrant their being placed on their defence. Accordingly, I place them on their defence.

Delivered, dated and signed in at Kisii on 6th of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Okenye for the Accused
- Omwoyo court clerk