



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL DIVISION

CRIMINAL CASE NO. 67 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH THOMAS OLANG.....ACCUSED

RULING

1. The accused **JOSEPH THOMAS OLANG** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on 14/6/2013 at about 7.00 p.m. at Kidfarmaco Estate in Kikuyu Town within Kiambu County murdered **JOYCE NJERI KAGI**.
2. He pleaded not guilty to the charges and to prove its case against him, the prosecution called a total of nine (9) witnesses and at the close of the prosecution case it was submitted by the prosecution that the evidence tendered on its behalf was enough to enable the court place the accused on his defence.
3. On behalf of the accused, written submissions were filed on 22/1/2018 which were highlighted by Miss Wandugi advocate to wit:- there was no malice aforethought established through the prosecution witnesses. It was submitted that the deceased called the accused to go repair for her a television which he did and that there is no evidence that he was armed at the time and that if there was any weapon at the scene, then it was brought there by the deceased. It was submitted further that as per the government analyst the blood stains on the trouser belonging to the accused were of unknown male while the sperms on the underwear of the deceased were equally of unknown male person thereby placing more than one person at the scene.
4. It was therefore submitted that the prosecution case raised a lot of doubts and as such could not establish a *prima facie* case against the accused. It was submitted that the conduct of PW1 the accused girlfriend in whose house he was at the time of the commission of the offence was unnatural by switching off her mobile phone when the accused called her regarding the incident.
5. At this stage all that the court has to decide is whether a case is made out against the accused just sufficiently to require him to make a defence as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR**.
6. I have looked at the evidence tendered before the court and without saying much thereon in particular the evidence of **PW1 EUNICE WANJIRU NJOROGI** the girlfriend of the accused who placed him at the scene, **PW5 CORP. JOHNA SAWA** who recovered items at the scene in the presence of the accused, **PW6 CHIEF INSPECTIOR CHRISTOPHER KIMUTI** who interrogated the accused at the scene and **PW7 SP. JEREMIA MUSYOKA** who recorded a confessing statement from the accused and **PW9 DR. ODUOR** who conducted post mortem examined on the body of the deceased and established the cause of death.
7. I am of the considered opinion and find that the prosecution has established a *prima facie* case against the accused person to enable me put him on his defence which I hereby do. The accused is therefore advised of his rights under **Section 306 (2)** and **307** of the **Criminal Procedure Code**.

DATED, DELIVERED and SIGNED at Nairobi this 4th day of April 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Ms Wandegu for Muoki for the accused

Accused present

Court clerk – Paul