



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL CASE NO. 53 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SAMMY KIMEU KIOKO.....ACCUSED**

**RULING**

1. The accused herein **SAMMY KIMEU KIOKO** is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 16th day of August, 2011, at Syiathani village, Wamunyu location in Mwala District within Machakos County murdered **SUSAN NDUNGWA KIMEU**.

2. The prosecution called 16 witnesses in support of its case. The brief summary of the case is that relatives and villagers to the accused herein **Sammy Kimeu Kioko** learnt that he had deserted his home in Wamunyu area. He was traced around Masinga area in the company of his three young children and was at the time trying to cook for his children in a thicket. The villagers based in Masinga area found the accused's actions rather weird and the clan elder was alerted who in turn communicated with his counterpart at Wamunyu area and it was then discovered that accused's spouse one Susan Ndungwa Kimeu had been murdered. The accused was apprehended and escorted to Masii police station. The accused's house was visited and the body of the deceased herein was discovered. The body was taken to Machakos Level Five Hospital mortuary. A post mortem was later conducted on the body. The accused was later charged with the present offence.

3. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against the accused herein so as to require him to be placed on his defence. A prima facie case was described in the case of **RAMANLAL TRAMBAKLAL BHATT =VS REPUBLIC [1957] EA 332** as one in which a reasonable tribunal directing its mind to the law and evidence placed before it can convict an accused person if no evidence is offered to the contrary by the defence. Hence in a nutshell the evidence so far adduced at this stage of the proceedings should be sufficient to sustain a conviction against the accused herein were he to elect to remain silent in defence.

4. Learned counsels for the parties herein agreed to file written submissions. I have considered the said submissions together with the evidence presented by the sixteen (16) witnesses. As this is a charge of murder it was incumbent upon the prosecution to prove certain ingredients of the offence such as the death and cause of death of the deceased, that an unlawful act or omission which caused the death of deceased had been perpetrated by the accused; that the accused had malice aforethought.

As regards the aspect of death, a majority of the witnesses who hailed from Wamunyu area did visit the home of the accused and saw the body of the deceased covered with a bedsheet and placed underneath a bed. The police officers who visited the scene saw the body and had it ferried to Machakos Hospital Mortuary. Hence there is no dispute that the deceased indeed died.

On the issue of the cause of death, Dr. Frederick Otieno Okinyi (PW.13) conducted the post mortem on the body of the deceased. He noted a skull fracture on the left temporal parietal area of the head. The doctor formed the opinion that the cause of death was head injury to the left temporal skull caused by blunt trauma. Indeed the police who visited the scene recovered a metallic hammer near the body of the deceased and which was produced as an exhibit.

On the issue of whether the accused committed an unlawful act or omission which caused the death of the deceased, the evidence of PW.5 and PW.6 who are children to both accused and the deceased stated that they saw the accused assaulting the deceased with the use of a hammer and that the accused wrapped the body with a bedsheet and placed it under a bed. This evidence clearly placed the accused at the scene of crime. The two witnesses further stated that the accused washed them to rid them of any bloodstains and took them to Masinga area. I find the assault by the accused caused the death of the deceased who was his wife.

On the issue of malice aforethought, it transpired from the evidence that the accused and deceased had had a strained relationship owing to allegation of infidelity on the part of the deceased. Prior to the attack, the accused and deceased are reported to have exchanged words. The conduct of the accused in hitting the deceased with a hammer and then placing the body under a bed and leaving with the children left no

doubt that he had malice aforethought stemming from the deceased's infidelity. It is noted that even after the deceased had been seriously injured, the accused did not even bother to seek for any medical assistance for the deceased. He placed the unconscious deceased under the bed and covered her with a bedsheet and showered the children and took off with them to Masinga. The matter of the attack upon the deceased left no doubt that the accused intended to inflict upon the deceased grievous injuries which led to the death. All these circumstances warrant the accused to be called upon to make a defence.

5. In the result, I find that the prosecution has established a prima facie case against the accused to warrant him to be called upon to make a defence. Consequently, I find the accused has a case to answer and is now called upon to make a defence pursuant to the provisions of Section 306(2) of the Criminal Procedure Code.

It is so ordered.

Dated and Delivered at Machakos this 2<sup>nd</sup> day of **October, 2018**.

**D.K. KEMEI**

**JUDGE**

**In the Presence of:-**

Machogu - for the State

Muthama for Mulei - for the Accused

Josphine - Court Assistant