



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 26 OF 2017

REPUBLIC.....PROSECUTOR

VS

NANCY NJERI NJOGU.....1<sup>ST</sup> ACCUSED

MICHAEL NGENE NJOGU.....2<sup>ND</sup> ACCUSED

RULING ON NO CASE TO ANSWER

1. The two Accused Persons, Nancy Njeri Njogu and Michael Ngene Njogu, are charged with murder contrary to section 203 of the Penal Code as read together with section 204 of the Penal Code. It is alleged that on 10<sup>th</sup> April, 2017 at Gachie area of Kihara within Kiambu County, the two Accused Persons assaulted Samuel Ng'ang'a Njoroge who later died from the injuries on the 7<sup>th</sup> day of June, 2017.
2. The Prosecution called six witnesses to establish its case. The Prosecution narrative is that the two Accused Persons – a mother and son – attacked the Deceased because they suspected he had influenced the 1<sup>st</sup> Accused Person's other son to take the family car without permission while drunk and caused an accident in the morning of 10/04/2017. John Maina Wanyoike who testified as PW1 was also in the motor vehicle and was also allegedly attacked by the two Accused Persons at the same time as the Deceased. The Prosecution case is that the Deceased died two months later of the injuries inflicted on him by the two Accused Persons.
3. At this stage in the proceedings, the Court is required to make a finding whether the Prosecution has presented sufficient evidence to require the Accused Persons to be put on their defence or whether the case should be stopped at this point. The test to be utilized is the famous one stated in *Bhatt –vs- R [1957] EA 332*: whether, as a matter of law – without taking any conclusive view of the credibility and probative value of the evidence presented – the Prosecution has adduced *reasonable sufficient evidence* of the matter in respect of which it has the burden of proof. Reasonable sufficient evidence is one which a reasonable tribunal could convict.
4. In my view, after considering all evidence tendered in the case and the submissions of the Defence Counsel, I have come to the conclusion that the evidence presented “taken at its highest”, meaning without final determination as to its creditworthiness or weightiness (See *R v Galbraith 73 Cr. App. R. 124*) – *could* lead a reasonable court to convict if no explanation is offered by the Defence.
5. **Consequently, the Court finds that both Accused Persons have a case to answer and puts them on their defence. The case shall be set down for defence hearing.**

Delivered at Kiambu this 22<sup>nd</sup> day of November, 2018.

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JOEL NGUGI

JUDGE