



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL CASE NO.7 OF 2017

REPUBLIC.....PROSECUTOR

- V E R S U S -

MONICA MUTHONI MUNGAI.....ACCUSED

R U L I N G

Monica Muthoni Mungai is charged with the offence of *murder contrary to Section 203 as reads with Section 204 of the Penal Code.*

The particulars of the charge are that on 10/5/2015 at Makenzi Estate of Ol Kalou Sub County, Nyandarua County, murdered Margaret Wambui.

The accused denied the offence.

The prosecution called two witnesses and were forced to close their case when the court declined to grant them an adjournment.

PW1, Catherine Wangeci Wangombe is the mother of the deceased, Margaret Wambui. She was at her shop on 10/5/2015 about 7.00 p.m. where her sister also called, also called Margaret Wambui, went to inform her that her daughter Margaret Wambui had been beaten and was at Ol Kalou Hospital. She proceeded Ol Kalou Hospital where she was informed that the daughter had passed away. She did not see the body till burial day. She admitted to having met accused before when the deceased went missing and she had been informed that the deceased had an affair with accused's husband. She next saw accused on the material day when she came to ask to use the deceased's phone and she left with the deceased. When they left to go and buy credit.

PW2 Charles Mungai Mwangi is the father of accused. He recalled the 18/5/2015 when he was called to Ol Kalou Police Station to go and witness as accused recorded her statement with the police, which he did.

There was no eye witness to the murder.

At the close of the prosecution case, the court has to determine whether the prosecution has established a prima facie case against the accused to warrant her to be placed on her defence. A prima facie case has been defined as one which a reasonable tribunal properly directing its mind to the law and evidence, could convict if no explanation is offered by the defence. See Ramanlal Tembakkal Bhatt v Republic (1957) EA 332.

The evidence in this case does not at all meet the threshold set by the above case because as observed, the evidence of PW1 & 2 does not link the accused to the deceased's death. For that reason, the prosecution has failed to establish a prima facie case against the accused for her to **answer and she is acquitted under Section 306 of the Criminal Procedure Code.**

Dated, Signed and Delivered at NYAHURURU this 15th day of March, 2017.

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R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Mutembei - prosecution counsel

Soi - Court Assistant

Accused Present