

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 47 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

FLORENCE WAMBUI NGURU ALIAS

NDUNGE WA KOCHI.....ACCUSED

RULING

1. The accused **FLORENCE WAMBUI NGURU** alias **NDUNGE WA KOCHI** is 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 24/4/2014 at Mathare Area 3C in Starehe District within Nairobi County murdered **DAVID MASESI MBUVI**.

2. She pleaded not guilty and to prove its case the prosecution called a total of Eight (8) witnesses and when called upon to make submissions as to whether the prosecution had established a case to enable the court place the accused on her defence, the same through her advocate on record opted to make no submission and left it to the court to decide based upon the evidence on record.

3. At this stage, the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case has been made to justify calling upon the accused person to offer an explanation as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“All the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively beyond reasonable doubt. A ruling that there is a case to answer would be justified in my opinion in a border line case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”

4. From the evidence tendered before the court and without saying much on the same at this stage I am satisfied and find that the prosecution has proved a prima facie case against the accused person sufficient enough to enable me put the same, which I hereby do, on her defence.

5. The accused is therefore advised on her rights **under Article 50(1) (k) and (l)** of the Constitution of Kenya 2010 and **Section 306 (2)** of the Criminal Procedure Code.

DATED, SIGNED and DELIVERED at Nairobi this 10th day of April, 2017.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Mrs. Kinoti for the State

Mr. Shimaku for the Accused

Accused present

Tabitha - court clerk