



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NUMBER 14 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSEPH KAGAI NYAMBURA.....ACCUSED**

**RULING**

Joseph Kagai Nyambura, “the accused”, is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 18<sup>th</sup> day of December 2014 at Mustard Estate in Eastleigh in Starehe Sub-County within Nairobi County, he murdered Anne Wairimu Nduati, “the deceased”. The accused pleaded not guilty to the charge. He is represented by Mrs. Kinyori, advocate.

In support of the case, the prosecution called a total of five (5) witnesses. Jane Wangari Nduati (PW1) the mother of the deceased testified that she received information on 18<sup>th</sup> December 2012 from her daughter Joyce Waithera (not a witness) that the deceased had been killed. She was in Muranga at the time. She travelled to Nairobi and saw the body of the deceased at the City Mortuary.

Jimmy Collins (PW2) was the Caretaker at the house where the deceased lived. On 18<sup>th</sup> December 2014, he received information of a commotion in the house occupied by the deceased. He went to the house in company of the informants and found the house locked from inside. Inside the house, the radio had been turned to high volume. They forced the door open and found the deceased on the ground with a man identified as the accused lying on her. Both were injured but the accused was still alive

Joseph Senale Lukumei (PW3) told the court that the deceased who was his friend called him on 18<sup>th</sup> December 2014 at about 9.00am. PW3 was at the time on duty near the building where the deceased lived. He rushed to the deceased’s house and found neighbours gathered outside. In company of a neighbour of the deceased they went to call PW2 the Caretaker (PW3). They opened the door of deceased’s house and found the deceased lying down and the accused lying on her. The accused was alive but deceased was dead. PW2 saw a knife lying near the accused and the deceased. It had blood stains on it. It was identified in court as MFI-1 and produced in evidence as Ex. 1.

By the time CPL Lillian Gacheri (PW4) from Pangani Police Station arrived at the scene she found the accused having been taken to hospital and the body of the deceased still lying at the scene. CPL Richard Wesonga (PW5) from DCI Office Starehe visited the scene, he found PW4 already there. He confirmed finding the body at the scene and the accused having been taken to hospital. Both PW4 and PW5 visited the clinic where the accused had been taken and confirmed he was at the clinic. PW5 made arrangements to have the accused transferred to KNH where he was treated for his injuries. He was later charged with this offence. The body of the deceased was taken to the City Mortuary where the post mortem was conducted.

The post mortem report and the medical examination report (P3 form) in respect of the accused were produced by the Investigating Officer when it became apparent that the doctors were not available to produce these medical documents. The post mortem, Exhibit 3 shows that the deceased suffered multiple injuries concentrated on her upper body. The cause of death was chest injuries due to penetrating sharp

force trauma. The P3 form Exhibit 2 shows that the accused has 6 stab wounds also on the chest which had been stitched. The defence counsel did not oppose the production of these medical documents by the Investigating Officer.

I have examined this evidence as required under **Section 306(2) of the Criminal Procedure Code** which provides as follows:

*“When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”*

I am satisfied that the prosecution has established a prima facie case against the accused person and I find that the accused has a case to answer. He is hereby placed on his defence. He is required to inform the court whether he will testify under oath in which case he shall be subject to cross examination or whether he will testify without taking oath. He is also required to inform this court whether he wishes to call witnesses to testify in his defence. Orders shall issue accordingly.

**Dated, signed and delivered this 6<sup>th</sup> day of April 2017.**

**S. N. Mutuku**

**Judge**