

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 11 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MARY NJOKI NG'ANG'A.....ACCUSED

RULING

This is a ruling in respect of a murder charge brought against Mary Njoki Ng'ang'a, hereinafter called "the accused". The charge is drawn under Section 203 as read with Section 204 of the Penal Code. In its particulars, the charge reads that on the night of 14th and 15th January 2015 at Marenga Road, Kangemi in Nairobi County, jointly with others not before court murdered James Ng'ang'a Ritho. The accused pleaded not guilty to the charge. She is represented by Mrs. Kinyori, advocate.

The prosecution is under a legal duty to lead evidence in support of a criminal charge because it is on the prosecution that the burden of proof lies. To prove the charge, the prosecution must adduce credible evidence to prove beyond reasonable doubt that the accused committed the act charged. At the stage where this trial currently is, the court must decide, basing on the evidence by the prosecution so far adduced, whether a prima facie case has been established. The burden of proof to be discharged is not as heavy as deciding the case finally after the trial has concluded. The procedure to be followed is found in Section 306 (2) of the Criminal Procedure Code which states that:

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.

Prima facie is Latin. When used as an adverb, it means "At first sight, on first appearance but subject to further evidence or information." When used as an adjective, it means "Sufficient to establish a fact or raise a presumption unless disproved or rebutted." ***Prima facie*** case therefore is (i) "The establishment of a legally required rebuttable presumption", and (ii) "A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favour." (See Black's Law Dictionary, Ninth Edition). In case law, ***prima facie*** case, means a case on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defense (See **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332** and **Republic v Abdi Ibrahim Owl [2013] eKLR**).

To my mind, even where the evidence against the accused person is water tight at the close of the prosecution case, procedure requires that the trial court must hear the defense of the accused before making its finding as to whether the case has been proved beyond reasonable doubt or not. The accused must be accorded his/her day in court to give his/her defence and rebut, if he/she so wishes, the evidence of the prosecution. This is grounded on the right to a fair trial, a tenet anchored in the Supreme law of the land, the Constitution.

What is the evidence in this case and does it meet the above threshold? The accused and James Ng'ang'a

Ritho, hereinafter called “the deceased”, were husband and wife. They owned many rental houses near their home in Kangemi. Their other relatives lived nearby. Their son George Ritho Ng’ang’a, PW1, (George) lived a few metres away. On the night of 14th January 2015, the couple was the only people in their house. In the early hours of 15th January 2015, at 3.45am the accused knocked at the home of her son, George and informed him that the accused and the deceased, her husband, had been attacked and the deceased kidnapped. George went with his mother into the scene where he noted that a big Sony Radio and an iron box were missing. Information was passed to the other relatives, including Peter Njenga Ritho, PW4, brother to deceased, and George Hiro Ritho, PW7, another brother to deceased. They reported the matter at Kabete Police Station which is under Dagoretti Police Division.

Investigations into the matter led to the recovery of the body of the deceased at Machakos Level 5 Hospital Mortuary. It had been taken to the mortuary by Police officers from Athi River Police Station upon recovering it at Lukenya Quarry. Examination of the body confirmed that the deceased died due to head injury and manual ligature strangulation. Investigations led police to recover blood stains in various parts of the house and the compound. These stains were examined at the Government Chemist Laboratories together with the stains lifted from the clothes recovered at the Lukenya Quarry where the body was found. The results from the DNA profiles confirmed that the stains of blood recovered from near the gate of the compound of deceased’s house, from the bedroom, and pieces of clothes collected at the Lukenya Quarry matched the blood sample extracted from the body of the deceased.

From my careful analysis of this evidence, it is clear to my mind that the prosecution is basing its case on circumstantial evidence. I have examined this evidence carefully and I am persuaded that it meets the threshold of *prima facie* case discussed above in this ruling. I am therefore satisfied that the prosecution has established a *prima facie* case against the accused. Consequently, it is my finding that the accused has a case to answer and shall be placed on her defense in compliance with Section 306 (2) of the Criminal Procedure Code. I hereby inform her of her right to adduce evidence in her defense and to call witnesses. The accused is required to notify this court how she wishes to adduce her evidence in defense, whether she will take oath or not and whether she will call witnesses or not.

Orders shall issue accordingly.

Dated, signed and delivered this 15th day of June 2017.

S. N. MUTUKU

JUDGE