REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 38 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

GEORGE NJENGA CHEGE.....ACCUSED

RULING ON NO CASE TO ANSWER

1. The Accused Person, George Njenga Chege ("Accused Person") is charged with murder contrary to section 203 of the Penal Code as read together with section 204 of the Penal Code. He is accused of unlawfully killing Joyce Wangari ("Deceased") on 15/06/2016 at Kiganjo Estate, Thika West Sub County within Kiambu County.

2. The Prosecution presented seven witnesses. The case is a simple and straight-forward one: The Accused Person was allegedly in his house with his wife, the Deceased, when he apparently fatally stabbed her. The Accused Person was found in their house with the body of the Deceased after he apparently tried to end his life as well. Police Officers had to break into the house to reach the Accused Person and the body of the Deceased which was found lying in a pool of blood.

3. No one saw the Accused killing the Deceased – even by the Prosecution's own rendering. Instead, the Prosecution relies on circumstantial evidence put together by the seven witnesses. The murder weapon was found next to the Accused Person providing a powerful link to the alleged homicide.

4. At the conclusion of the Prosecution case, the Court considers submissions by the Prosecution and Defence whether the evidence presented warrants putting the Accused Person on his defence. The task of the Court at this stage in the proceedings is to decide if Prosecution has made out a sufficient case for the Accused Persons to be placed on their defence. The test to be utilised by the Court in making that determination was famously stated in the ***Bhatt –vs- R [1957] EA 332***. In plain terms, the Court is expected to determine if there is enough reliable evidence to warrant the Court to hear from the Accused Persons or if the case should be stopped at this point.

5. The test was stated in the ***R v Galbraith*** **[1981] 1 WLR 1039** thus:

> (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a [Court] properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability ….and where on one possible view of the facts there is evidence upon which a [Court] could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to [proceed for Defence hearing]…. There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the dis

6. The Defence Counsel has vigorously argued that the evidence tendered does not warrant putting the Accused on his Defence. Mr. Ng'ang'a's lead submission is that the evidence tendered does not rise to the level of evidence required of circumstantial evidence to sustain a conviction. He argues that it cannot be said that the inculpatory facts put forward by the Prosecution are incompatible with the innocence of the Accused Person and incapable of explanation upon any other reasonable hypothesis than the guilt of the Accused Person. I do not agree that. At this stage in the proceedings, the Court is not required to take a view of the "weightness" and credibility and reliability of the evidence presented by the Prosecution. As the Defence Counsel correctly states, the Court can only rule that the Accused Person has no case to answer where it forms the view that the evidence presented is so hopelessly contradictory or so woefully unreliable that no reasonable tribunal could convict based on it. With respect, that is not the position here. Here there is enough evidence presented by the Prosecution which, "taken at its highest", meaning without final determination as to its creditworthiness or weightiness (See ***R v Galbraith 73 Cr. App. R. 124***) – a reasonable court ***could*** convict if no explanation is offered by the Defence. Consequently, in the circumstances, the Court finds that the Accused Person has a case to answer.

7. Consequently, the case shall be set down for defence hearing.

Delivered at Kiambu this 13th July, 2017.

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JOEL NGUGI

JUDGE