

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 10 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

MARY NDINDA MUTISYA.....ACCUSED

RULING

Mary Ndinda Mutisya, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence are that on the 8th day of January 2013 at Makaburini area within Kawaida Village in Kiambu County she murdered Joshua Murunga Nambaru, deceased. The accused has pleaded not guilty to the charge.

The prosecution has closed its case after testimony of 8 witnesses. It is upon this court to determine at this stage of the trial whether the evidence adduced establishes a prima facie case against the accused person in order to place her on her defence.

I took over the proceedings in this trial after two witnesses had testified before my predecessor. I have carefully read all the evidence to satisfy myself whether the evidence adduced is such that this court properly directing its mind to the law and the evidence could convict the accused person if no explanation is offered by the defence (see **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**).

There is no eye-witness to the circumstances leading to the death of the deceased. The case for the prosecution may be based on circumstantial evidence. Evidence shows that PW2 Benson Baraza the father of the deceased was sleeping around 11.00am on 8th January 2013 when he was informed that his son had been killed. He went out and found his son lying on the ground bleeding from deep cuts on the head and neck. PW2 picked the boy up but he died in his arms. The matter was reported to the area assistant chief Anthony Kamau, PW1, who confirmed the incident and started looking for the accused who was suspected to have caused the fatal injuries. She was found in hiding and arrested. She was handed over to the police and charged with this offence after investigations were completed.

Evidence of the pathologist Dr. Peter Muriuki Ndegwa, PW7, confirms the death of the deceased due to severe head injury due to sharp force trauma.

The accused's blood-stained skirt, exhibit 1, and a *panga* suspected to be the murder weapon, exhibit 3, were examined by Dr. Joseph Kagunda, PW6. He profiled the stains found on these items and a sample of deceased's blood for DNA and found that the blood-stains found on accused's skirt and the *panga* belonged to the deceased. According to prosecution evidence the accused led police to recover the *panga*. In my considered view there is sufficient circumstantial evidence to persuade this court to place the accused on her defence. Consequently, I find that the accused has a case to answer and in compliance of section 306 (2) of the Criminal Procedure Code the accused has been informed of her rights. Orders shall issue accordingly.

Dated, signed and delivered this 10th November 2016.

S. N. Mutuku

Judge

In the presence of:

Ms Macharia for the prosecution

Mr. Wamwayi for the accused

Ms Mary Ndinda Mutisya, the accused

Mr. Daniel Ngumbi, court clerk