



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 93 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

WYCLIFE WAFULA NAMASWA.....ACCUSED

RULING ON A CASE TO ANSWER

1. The accused person herein, **WYCLIFFE WAFULA NAMASWA**, is charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence are that on 22nd September, 2011 at Enkoiko village within Oloismis location in Transmara District of Narok County murdered **DAMARIS KEYIEYIO NAMASWA**.
2. The prosecution called a total of 7 witnesses in support of its case. The first 4 witnesses were heard by Justice R. N. Sitati, my predecessor in the case, while I heard the last 3 witnesses.
3. I have however perused the typed proceedings containing the evidence tendered by all the witnesses as follows:
4. **PW1 MARY NEMAOI ENE SEITAI** was the mother of the deceased. Her testimony was that on 22nd September, 2011, the accused, who was married to the deceased, came to her home at about 3 p.m. to ask her about the whereabouts of the deceased and to warn her that she will never see the deceased again. The accused then left but she followed him to his house and on asking the accused where the deceased was, he entered into the house and pulled the deceased out. She stated that the deceased looked weak and told her that the accused had hit her with a rungu. The deceased was taken to Kilgoris Hospital but she died at 7 p.m. on the same day. On cross examination, PW1 stated that she did not witness the accused hit the deceased but that they would quarrel from time to time.
5. **PW2 SEPATA NOOLKEPAYANG SEITAI** accompanied PW1 to the accused's house on the material day and witnessed the accused dragging the deceased out of the house. She stated that the deceased informed them that the accused had hit her with a rungu and kicked her. She also said that she saw blood oozing out of the deceased's mouth.
6. **PW3 JULIUS LESHAN OLE MUGIE** was the village elder who assisted in taking the deceased to the hospital. He also stated that the deceased told him that the accused had hit her on her right kidney.
7. **PW4 SAMUEL LEPITA KITRAPI** was the brother of the deceased. His testimony related to how he assisted in tracking down the accused through the phone before the accused was arrested by the chief and elders.

8. **PW5** was **DR. MISOI SAMUEL** who conducted post mortem examination on the body of the deceased who was suspected to have been poisoned. He testified that he observed that the body had no external injuries but internally, the spleen was ruptured and concluded that the cause of death was internal haemorrhage secondary to ruptured spleen even though he was not able to establish the cause of the ruptured spleen since the spleen is an organ that is protected by the rib cage. On cross examination, PW5 stated that the cause of the ruptured spleen was not established.

9. **PW6 JOYCE WAIRMU JOEL** a Principal Chemists testified that an analysis of the body fluids and blood samples of the deceased that were submitted for analysis did not establish the existence of any toxic chemical substances.

10. **PW7** was **Number 50589 P.C. JAMES NGUNJIRI** was the investigating officer in the case. He received the report that the accused had assaulted the deceased, arrested the accused and witnessed the post mortem examination on the deceased body. He also testified that he visited the accused's house following the report and noted that things were scattered all over, an indication that there was some commotion in the house. PW7 confirmed that there was no eyewitness to the alleged assault.

11. The standard of proof in criminal cases is established to be beyond reasonable doubt. The standard of proof in respect to whether the prosecution has established a prima facie case against an accused person so as to warrant his being placed on his defence was laid down in the celebrated case of **Ramanlal Trambaklal Bhat vs Republic (157) EA 332** as follows:-

“(i) The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution's case, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.

“(ii) The question whether there is a case to answer cannot depend only on whether there is “some” evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless, discredited evidence.”

12. In a murder trial, the prosecution bears the onus of proving that the deceased died, that the accused caused that death, how the death was caused and that the accused, with malice aforethought intended to cause that death.

13. In the instant case, at least 2 witnesses testified that the deceased talked to them and informed them that the accused had assaulted her with a rungu. PW5 testified that a blunt injury could have caused the ruptured spleen that led to the death of the deceased. 2 witnesses testified that they saw the accused dragging the deceased from her house and that she was then in a helpless state.

14. In view of the above, I am satisfied that the prosecution established a prima facie case against the accused to warrant me to put him on his defence. He is accordingly placed on his defence.

15. Under the provisions of **Section 306 (2) of the Criminal Procedure Code**, this court hereby informs the accused person of his right to inform this court how he wishes to give his evidence, whether by taking oath or without taking oath. The accused person has also been informed of his right to call witnesses in his defence and to inform this court how many witnesses he wishes to call.

16. Delivered, dated and signed in at Kisii on **7th of November, 2016.**

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Okenye for Kaburi for the Accused
- Omwoyo court clerk