

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 76 OF 2012

REPUBLICPROSECUTOR

VERSUS

JAMES KAHIGA KARURI.....ACCUSED

RULING

James Kihiga Karuri, the accused, is charged with the murder of Peris Nyokabi Gaitho contrary to section 203 read with section 204 of the Penal Code. The offence is alleged to have been committed on 9th September 2012 at Gitiha Village in Githunguri Kiambu County.

The prosecution closed its case after calling evidence of eight witnesses. The evidence on record shows that the deceased and the accused lived together. They were not married. The deceased had three children. The accused was not their father. The deceased was found dead on 10th September 2012 inside her house. The scene of crime was Gitiha Shopping Centre in Githunguri. The scene of crime officer who visited the scene and took photographs described the body as having scratches on the neck. The doctor who performed the post mortem found death occurred due to asphyxia as a result of manual strangulation.

The accused was arrested and charged with connection with deceased's death. The reason for his connection to the death of the deceased was because before the incident leading to the death he had discussed with Mary Wanjiku Gaitho, PW1 and deceased's mother about getting "his family back". This meant the deceased and her children. The accused is attributed with telling David Mbuti, PW2, that he had blundered while explaining to him why police were looking for him. He is also said to have gone to pay James Gitau Itotia, PW3, a debt of 30 shillings on 10th September 2012 telling him that he did not want to go to heaven with a debt.

Counsel for the accused Mr. Kihang'a submitted at length on the issue that the prosecution has not made out a prima facie case against the accused. He faulted the evidence of PW1, PW2, PW3 and PW4 saying they all knew the accused as relatives or village elder and therefore there was need to have independent evidence from the neighbours. He asked the court to acquit the accused at this stage. This court will be able to analyze and deal with the issues raised by the defence in a substantial manner during the judgement.

I have carefully examined the evidence. I am alive to the fact that at this stage the court is not required to analyze all the evidence as though writing a judgement. What is required is to determine if the evidence establishes a prima facie case against the accused to require him to give evidence in his defence. I am persuaded that this threshold has been reached. I will therefore and do hereby find that the evidence so far tendered makes out a case against the accused requiring him to defend himself. He is hereby put on his defence. This court has explained to him his rights under section 306 (2) of the Criminal Procedure Code to enable him address this court on the manner he wishes to defend himself and whether he wishes to call any witnesses in his defence. I make orders accordingly.

Dated, signed and delivered this 15th day of July 2015.

S. N. MUTUKU

JUDGE