

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.7 OF 2012

REPUBLICPROSECUTOR

VERSUS

EVANS ODHIAMBO OGOLLA.....ACCUSED

RULING

Evans Odhiambo Ogolla is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that between 6th and 20th December 2011 at Konteina Guest in Kiambu District within Central Province murdered Esther Mukami Kamuti. In making submissions at the close of the prosecution case, prosecution counsel stated that the State had presented a total of 9 witnesses. The record however shows that twelve witnesses testified for the prosecution. The testimony of all the 12 witnesses has been considered by the court.

The case against the accused is that he was employed as a guard in the premises in which the deceased worked as a receptionist cum accommodation attendant. He was on duty on the night that the deceased disappeared. Later the deceased's decomposing body was found in one of the rooms. In the course of investigations, the accused was found in possession of the deceased's phone. At the close of the prosecution's case both the prosecution and the defence made their respective submissions. The prosecution has urged the court to find that it has established a *prima facie* case against the accused.

The defence on the other hand contends that the prosecution has not established a *prima facie* case against the accused. The gist of their submissions is that the investigation centred on the accused, whereas there were pointers in the witness statements which should have led to the investigation of one Peter Gitau who owned the Konteina bar & restaurant business. That may well be so. However, my careful consideration of the totality of the evidence now on record has led me to the finding that the accused has a case to answer. He was the guard on duty on the night of the disappearance of the deceased and did indeed see her that night. He was later found with the mobile phone of the deceased. He is accordingly put on his defence under Section 306 of the Criminal Procedure Code.

Orders accordingly.

Ruling delivered, dated and signed at Nairobi this 14th day of July, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk
.....: Accused/Applicant
.....: For State
.....: For Accused/Applicant

