



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 66 OF 2013**

REPUBLIC..... PROSECUTOR

VERSUS

JOSEPH MBURU NJOROGE..... ACCUSED

**RULING**

Joseph Mburu Njoroge is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on 11<sup>th</sup> June 2013 at Ricard Flats in Ngara Area, Starehe District within Nairobi County (*sic*). The victim is Samuel Ndungu Njoroge. The accused is represented by Mr. Ratemo Oira, advocate.

After calling a total of nine (9) witnesses, the prosecution, led by Ms Ikol, prosecution counsel closed its case. Three of the nine witnesses, PW1, PW2 and PW3 testified before my predecessor, Hon. Lady Justice Florence Muchemi. I took evidence of six witnesses. The duty of this court at this stage of the trial is to determine whether the evidence by the prosecution witnesses establishes a prima facie case to necessitate the accused to be called upon to tender evidence in his defence.

The death of the deceased was confirmed by Doctor Ndegwa, PW6, who told the court that the death of the deceased was caused by head injury due to blunt force trauma consistent with a fall from a height. Before he met his death, the deceased and his friend Michael Maina Kibe, PW1, visited the accused at his residence in Flat No. 79 at Ricard Flats, Ngara. Evidence shows that while there an argument ensued, necessitating PW1 to advise the deceased to leave. The deceased is said to have stood up and walked outside the Flat followed by the accused. Shortly thereafter PW1 followed them to the balcony but found the accused alone at the balcony. He realized that the deceased had fallen over the balcony and suspected that the deceased had been pushed down by the accused. The matter was reported to the police leading to the arrest of the accused. He was charged with this offence.

At the close of the prosecution case, the prosecution counsel submitted that the prosecution has established a prima facie case against the accused person by adducing evidence to show that the accused picked a quarrel with the deceased, chased him outside the Flat to the balcony where he pushed the deceased over the balcony.

The defence advanced a different theory. Mr. Oira submitted that the accused jumped over the balcony. He also submitted that the investigations were poorly carried out and that Michael Maina Kibe, PW1, was an accomplice and his evidence must be treated as that of an accomplice and cannot be relied on. In support of that argument, counsel relied on **Criminal Appeals No. 40 and 41 of 1949 (consolidated)R. v. Kipkering Arap Koske & Another**

I have carefully considered all the evidence and the submissions. I wish to state that I am persuaded that at this stage of the trial, a prima facie case has been established against the accused person and this court will and does hereby place him on his defence. The issues raised by the defence shall be addressed fully in the judgement. This court has complied with section 306 (2) of the Criminal Procedure Code by informing the accused of his right to give his evidence in his defence, either under oath or without taking the oath, and to call witnesses in support of his defence. I make orders accordingly.

**Dated, signed and delivered this 11<sup>th</sup> November 2015.**

**S.N.MUTUKU**

**JUDGE**

**In the presence of:**

Ms Florence Ikol for the prosecution

Mr. Oira Ratemo for the accused

Mr. Joseph Mburu Njoroge, the accused

Mr. Daniel Ngumbi, court clerk