



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 23 OF 2011 (MURDER)**

REPUBLIC..... PROSECUTION

*VERSUS*

PIUS MUTEMBEI MUKIRA.....ACCUSED

**RULING**

This is a ruling on whether the accused has a case to answer. He faces a charge of murder contrary to Section 203 as read with 204 of the Penal Code. He pleaded not guilty to the charge.

The prosecution called 10 witnesses. PW1 was the husband of the deceased who testified that the deceased left home to buy sukumawiki (kales) on 18/7/2011 at around 7.00 a.m. PW1 also left home and returned at around 6.00 p.m. just to find the deceased absent from home. He embarked on a search for her assisted by neighbours to no avail.

On 19/7/2011 PW1 was informed that the body of his wife had been recovered in the well of a neighbour one Gilbert Kinyua and that the accused who was a worker in the farm had been arrested. He proceeded to the home of Gilbert Kinyua and he found police at the scene. The body of the deceased was already in the police vehicle and was taken to the mortuary.

PW6 the assistant chief of Gikuuri sub-location, Runyenjes was informed of the disappearance of the deceased. He received information that that the accused Pius Mutembei Mukira was the suspect in the murder of the deceased. Accompanied by PW4 the village elder he caused the arrest of the accused and interrogated him.

The team led by the assistant chief proceeded to the home of Gilbert Kinyua where they recovered the body of the deceased in the well. PW6 informed the police who came to the scene and took the body to the mortuary.

PW9 was the investigating officer in this case. He took the suspect to PW10 Senior Resident Magistrate Runyenjes who recorded a confession. The suspect stated that he took part in the murder of the deceased and that he was with his girlfriend one Joyce Warue when the deceased went to his house. The deceased was attacked by Joyce on allegation that she had an affair with the accused. The accused said that he also hit the deceased and helped to throw the body of the deceased in the well.

PW8 the doctor found that the body of the deceased had a penetrating stab wound on the left side of the chest, bruises on the left side of the head, fluids in the lungs and bruises in her private part. He formed the opinion that the cause of death was asphyxia and drowning.

The counsel for the accused Mr. Mungai filed submissions to the effect that the accused has no case to

answer. He argued that there was no eye witness and that there was no evidence to link the accused with the murder. The confession recorded by PW10 shows that there was another suspect by the name Joyce Warue Nyaga who was released after interrogation. The evidence in totality is not sufficient to support the charge against the accused.

The prosecution counsel Ms. Nandwa submitted that the accused was the last person to be seen with the deceased and that the confession links him directly to the murder. If it is true that the accused was not involved he should have reported the matter to the police.

Section 203 defines the offence of murder as the cause of the death of another person by an unlawful act or omission with malice aforethought. Section 206 defines malice aforethought as an intention to cause the death or to do grievous harm to any person, whether that person is the person actually killed or not.

There was no eye witness in the murder of the deceased. A confession was recorded by PW10 which links the accused with the murder. In addition there is circumstantial evidence from several witnesses connecting the accused with the murder. I do not wish to go into the details of the said evidence or to give analysis of the same. The reason for this decision is that the court may preempt the defence of the accused.

I rely on the case of *ANTHONY NJUE NJERU VS REPUBLIC [2008] eKLR* where the Court of Appeal held:-

*We wish to point out that it is undesirable to give a reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the Court concerned is acquitting the accused person.*

On perusal of the evidence of the 10 prosecution witnesses, I am satisfied that it is sufficient to support the charge of murder facing the accused. I find that he has a case to answer and he is therefore called upon to make his defence.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF NOVEMBER, 2015.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Nandwa for the State**

**Accused present**