

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 37 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

S K B.....1ST ACCUSED

J M M.....2ND ACCUSED

RULING

S K B and **J M M**, hereinafter referred to as the 1st and 2nd accuseds respectively are before this court on trial for 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 13th day of October 2009 at around 1.00pm at Litein Township in Bureti District of the Rift Valley Province jointly with others not before court it is alleged the duo murdered **M J B**. A total of six witnesses testified in support of the prosecution's case. At the close of the Prosecution's case, learned Counsels from both sides were invited to make submissions on whether or not the prosecution had made out a *prima facie* case to place the accused persons on their defence.

I have carefully considered the evidence of each of those witnesses. The only eye witness in this case is **SMB** (P.W.1). She is a child aged seven (7) years and at the time of giving evidence, she was in class 2 at [*particulars withheld*] Academy. She told this court that she saw her father, the 1st accused herein, cut her mother, the deceased. She claimed that she previously heard her father threaten to cut her mother's legs. P.W.1 stated that on the fateful night she was asleep and when she woke up she saw the 1st accused who was armed with a panga cut the deceased on her leg and hand. I observed the demeanor of the witness as she testified. She completely avoided any direct eye contact with the 1st accused. P.W.1 said her father fled the scene after the incident. P.W.1 could not remember the name of her father (1st accused). P.W.1 remembers police came to take the deceased to hospital for treatment. It is the evidence of **P.C Christopher Mutinda** (P.W.2) that he together with his colleagues were on night patrol when they met with **W C N** (P.W.4) who told them that her neighbour, (the 1st accused) had a long quarrel with his wife (deceased) and was threatening to kill her. P.W.2 said they were taken to the deceased's home where they met with **J M M** (2nd accused). Upon interrogation, P.W.2 said, the 2nd accused told them that the 1st accused had a quarrel with the deceased. P.W.4 corroborated the evidence of P.W.2 in this respect. She stated that on the fateful night the 2nd accused had gone to request her to give him police contacts because the 1st accused was having a quarrel with his wife (deceased). P.W.4 said she and her friend **Hellen Chepkemoui Sigei** were prompted to make a report to the police. **A.P.C Samuel Ogola** (P.W.3) told this court that the 1st accused reported to him that he and his wife (deceased) had been attacked by thugs that night. P.W.3 visited the deceased's home where she found the deceased lying down while groaning in great pain. P.W.3 informed Litein Police Station who came to take the deceased to hospital. **P.C Kinuthia** (P.W.6) told this court that the police decided to prefer a charge of murder against the 1st accused when they heard the deceased loudly question the 1st accused why he was pretending not to know who assaulted her. The postmortem report which was produced before this court shows that the cause of death was severe haemorrhage with resultant cardio respiratory failure following multiple deep cut wounds sustained from assault.

It is the submission of Mr. Ongany learned Counsel for the accused that prosecution has failed to tender sufficient evidence to enable this court place the accused person on their defence. Mr. Ongany was of the view that P.W.1 was too young for her evidence to be relied upon. Miss Muthee learned Prosecution State Counsel was of the view that the prosecution had made out a *prima facie* case as

against the 1st accused to be placed on his defence. She however conceded that there was no evidence to link the second accused with the offence.

After a careful consideration of the evidence tendered by the prosecution and the rival submissions, I have come to the conclusion that the prosecution has made out a *prima facie* case as against S K B (1st accused). Consequently, I place him on his defence. It is upon him and his learned Counsel to state whether or not he is going to personally testify and if yes whether or not he is going to give sworn testimony. He should also indicate whether or not he is summoning independent witnesses.

The case as against **J M M** (2nd accused) must fail. I must commend Miss. Muthee for conceding the case as against the 2nd accused. There was no iota of evidence connecting the 2nd accused with the offence. I find him not guilty. Consequently, J M M is acquitted hence he should be set free forthwith unless lawfully held.

Dated, signed and delivered in open court this 6th day of March, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Lopokoyit for Director of Public Prosecution

Mr. Ongany for Accuseds'