REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO E007 OF 2023

REPUBLIC……..

…….PROSECUTOR

VERSUS

MERCY WAIRIMU MAINA……

ACCUSED

RULING

1. The Accused person, **MERCY WAIRIMU MAINA** is charged with ***murder*** contrary to ***section 203*** as read with ***section 204*** of the ***Penal Code.*** The particulars were that on the night of 31/03/2023 and 01/04/2023 at Muthaiga village in Kieni East Sub-county within Nyeri County jointly with others not before court murdered PETER MWANIKI NJAGI.

2. The accused person took plea and she pleaded not guilty to the charge. The prosecution called a total of twenty (20) witnesses. In this ruling, the court is being called upon to decide whether or not the prosecution has made out a *prima*

facie case against the accused person that would warrant this court to call upon her to give her defence.

3. The prosecution's counsel filed written submissions and argued that the ingredients of murder were proved beyond reasonable doubt since the evidence on record was produced by credible and reliable witnesses. Further, the circumstantial evidence met the threshold and linked the accused to the death of the deceased as she was the last person in contact with the deceased on the night of 31/03/2023 which was in line with the doctrine of the last seen. Additionally, the exhibits produced pointed to the accused as the one who assaulted the deceased so grievously that the injuries sustained from the assault led to his death.

4. He submitted that malice aforethought has been proven by the injuries sustained, the weapon used and part of the body targeted which pointed to an intention by the accused to cause grievous harm hence a *prima facie* case has been made against the accused person.

5. In rejoinder, counsel for the accused person submitted that the prosecution's case was riddled with conjectures, hearsay and lacked direct proof linking the accused person to the offence. Further, the evidence by the prosecution was contradictory and fragmented and based on suspicion. That the witnesses did not witness the murder and PW9, the government analyst established that the two cups recovered at the scene contained DNA belonging to unknown male origin and confirmed that none of the DNA matched that of the accused person. Further, the investigation officer failed to establish how the accused's testimony did not add up, he failed to establish whether the nails meant to lock the door were in lock mode or not, he failed to establish whether the position he expected the deceased's shoes to be was based on the deceased's practice or an assumption based on his own practice, he failed to establish whether the accused was hurt as he confirmed that she was examined by a female police who was not a witness and he confirmed that he never took steps to have the accused examined in hospital and he

did not know whether she was treated after the attack or not.

6. She submitted that all testimonies pointed to the accused reporting the incident, not perpetrating it. No one saw the accused inflict injuries that claimed the deceased's life. The prosecution's case created suspicion and the DNA from the two cups recovered from the scene were from unknown males which corroborated the accused's version of four intruders. The prosecution's case was riddled with inconsistencies as PW2 spoke of screams whereas PW3 insisted there were no screams. PW6 alleged the accused had bruises yet she could not ascertain their age. Further investigations were not done especially to the close friends who knew the deceased's financial status to rule out the alleged intruders and material witness especially Madam Keller who examined the injuries on the accused was not called to testify. Hence, placing the accused person on her defence to explain herself to patch the above gaps would amount to shifting the burden of proof on her.

7. I have considered the evidence so far from the prosecution's side, the submissions by the prosecution and the accused's counsel and the authorities cited. As I have stated above, the issue before me at this stage is whether the evidence so far adduced warrants calling upon the accused person to defend herself. In other words, does the accused person have a case to answer? In ***Republic vs. Abdi Ibrahim Owl [2013] eKLR*** a *prima facie* case was defined as follows: -

> ***"Prima facie" is a Latin word defined by Black's Law Dictionary, 8th Edition as "Sufficient to establish a fact or raise a presumption unless disproved or rebutted". "Prima facie case" is defined by the same dictionary as "The establishment of a legally required rebuttable presumption". To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.***
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> ***In Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335,*** the court stated as follows:
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> ***"Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one "which on full consideration might possibly be thought sufficient to sustain a conviction." This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to***

answer depends only on whether there is "some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence". A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence…It is may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence."

8. The threshold required at this juncture is whether based on the evidence before this Court, after properly directing its mind to the law and the evidence, may convict if the accused person chose to give no evidence. This was explained in ***Ronald Nyaga Kiura vs. Republic [2018] eKLR*** as follows;

"It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person. This is well illustrated in the cited Court of Appeal case of RAMANLAL BHAT -VS- REPUBLIC [1957] EA 332. At that stage of the proceedings the trial court does not concern itself to the

standard of proof required to convict which is normally beyond reasonable doubt. The weight of the evidence however must be such that it is sufficient for the trial court to place the accused to his defence."

9. It therefore follows that a case to answer ought only to be found where the prosecution's case, on its own, may possibly, though not necessarily, succeed. Having considered the material placed before the court, it is my view that the prosecution has established a *prima facie* case for the purposes of a finding that the accused person has a case to answer.

10. In the premises, I make a finding that the accused has a case to answer and is placed on her own defence.

Dated signed and delivered this 17th day of December 2025.

A.K. NDUNG'U

JUDGE