



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 4 OF 2017**

***(CORAM: F.M. GIKONYO J.)***

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**AGNES NYAGUTHII .....ACCUSED**

**RULING**

**Case to Answer**

[1] The accused is charged with the murder of Benson Gikonyo Wanjohi Contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that the accused committed the offence on 1<sup>st</sup> February 2017 at Enesambulai Area in Narok North sub- County within Narok County.

[2] She pleaded not guilty to the charge. To prove the case against her, the prosecution called and examined a total of Five (5) witnesses. Some of the witnesses are relatives to the deceased.

[3] At the close of the prosecution’s case the prosecution filed written submissions while the defence opted not to file the same.

[4] The prosecution submitted that the prosecution had called sufficient evidence to warrant the accused persons being put on her defence. They relied on the evidence on record, Section 107 (1) of the Evidence Act, Section 203 of the Penal Code and the cases of ***Ramanla Tramaklal Bhatt V R [1957] EA 332, Republic V Mohammed Dadi Kokanee And 7 Others [2014] eKLR,*** and ***Republic V Susan Kahindi, [2010] eKLR***

[5] The essential elements of the offence of murder which the prosecution should prove are:-

- i. The fact and the cause of death**
- ii. That the said death was unnatural**
- iii. That it was carried by an act of omission and commission on the part of the accused person**
- iv. That it was caused with malice aforethought as defined under section 206 of the penal code.**

[6] At this stage of the proceedings, the court is required to only establish whether a prima facie case has been made out against the accused to warrant calling her to her defence. According to the case of Ramanlal Trambaklal Bhatt V Republic (1957) EA 332 :-

*... It may not be easy to define what is meant by 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.”(Emphasis added)*

[7] The scope of this exercise was properly explained by Ojwang J (as he then was) in the case of Republic V Karanja Kiria Cr.Case No.13 Of 2004 Nairobi [2009] eKLR that:-

**“The question at this stage is not whether or not the accused is guilty as charged but whether there is such cogent evidence of his connection with the circumstances in which the killing of the deceased occurred, that the concept of prima facie case dictates as a matter of law that an opportunity be created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled . . .**

**The Court of Appeal Criminal Appeal No. 77 of 2006, the Court of Appeal expressed that too detailed analysis of evidence, at no case to answer stage is undesirable if the court is going to put the accused onto his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.” (Emphasis added).**

[8] Dr. Langat Robert conducted a postmortem at Narok County Referral Hospital on the body of the deceased. Post mortem report is signed and dated 3/2/2017. It was produced as **P Exh 1**. He indicated that the deceased’s right side of the head had a large wound with a gaping skull injury with the left skull parietal and part of the frontal missing. There was a cavity measuring 10x 13 cm with cranial cavity visible; empty. The deceased also had fractured right mandible with wound on the right jaw measuring 5 x 3 cm. large wound on the right shoulder measuring 12 x 14 cm with fracture of the right clavicle. He opined that the cause of death was severe intracranial hemorrhage. This as well as the testimonies of the other witnesses confirmed that the deceased did not die of natural causes.

[9] There is such cogent evidence of her connection with the circumstances in which the killing of the deceased occurred. Nevertheless, I do note prosecution witnesses alluded to the accused having been under medication for mental health. And, it is therefore, apt an opportunity be created for the accused to state her own case regarding the killing.

[10] Accordingly, the accused person is hereby put on her defence. It has been explained to her of the rights, and exercise her rights under Section 306(2) and 307 of the Criminal Procedure Code. The court is however, acutely aware of her constitutional right under Article 50 of the Constitution; the right to remain silent.

[11] The accused through the advice of her advocate on record is now called upon, if she so wishes, to intimate to the court the manner she wishes to defend herself. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THIS 21ST DAY OF MARCH 2022 THROUGH MICROSOFT TEAMS ONLINE APPLICATION**

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**F. M. GIKONYO**

**JUDGE**

**IN THE PRESENCE OF:**

**1. ACCUSED PERSON**

**2. KIPTOO FOR THE ACCUSED PERSON**

**3. KARANJA FOR THE REPUBLIC**

**4. MR. KASASO CA**



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