



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 19 OF 2017

REPUBLIC.....STATE

-VERSUS-

BETHSHEBA MOGOI MOKANDU.....ACCUSED

RULING

1. The Accused Person is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the 22nd day of February, 2017, at Kapsita Village in Molo Sub-county within Nakuru County, she murdered Linet Kemunto.
2. The Accused Person pleaded not guilty and the cases proceeded for full hearing before Justice J. Mulwa. The Learned Judge heard seven witnesses. The Prosecution theory was straightforward: the Accused Person suspected that her husband was having an affair with the Deceased. She tracked him to the Deceased house on that fateful night. The Accused Person, then, drew the Deceased outside her house, attacked her brutally whilst stabbing her severally with a knife.
3. Seven witnesses testified giving factual account to the theory. At least one was categorical that she saw the Deceased stabbing the Deceased. Three others placed her at the scene including two who saw her with a knife.
4. The Court’s task at this point is to determine if the Prosecution has made out a prima facie case. A *prima facie* case is defined in the negative: A *prima facie* case is not established if at the end of the Prosecution case there is no evidence upon which, if the evidence, taken at its highest, is accepted, a reasonable court could convict. (See *R v Galbraith 73 Cr. App. R. 124*).
5. At this point in the case, it would be improper to assess the strength or weakness of the prosecution evidence by taking a view of the witness reliability unless I came to the conclusion that the state of the evidence called by the Prosecution, taken as a whole, is so unsatisfactory, contradictory, or so transparently unreliable that no court, properly directing its mind, could properly convict on the evidence. In my view, this forbiddingly high threshold is not met here, since there is some evidence which, if accepted and “taken at its highest”, would entitle the Court to convict.
6. **Hence, I conclude that on the basis of the evidence adduced, the Prosecution has established a prima facie case to warrant the Accused Person to be put on her defence.**
7. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 31ST DAY OF MARCH, 2022

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.



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