



**Director of Public Prosecution v M'ikinitia (Criminal Case  
E006 of 2021) [2023] KEHC 26643 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26643 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E006 OF 2021  
TW CHERERE, J  
DECEMBER 20, 2023**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... PROSECUTOR**

**AND**

**DAVID GATHURA M'IKINITIA ALIAS DAUTI ..... ACCUSED**

**RULING**

1. David Gathura M'ikinitia alias Dauti (accused) is charged with the offence of Murder Contrary to section 203 as read with section 204 of the [Penal Code](#).  
The particulars of the charge are that on 30th June, 2020 at Leeta village, Amwathim1 sublocation, Kabachi location, Igembe Sub-County within Meru County murdered Jeremiah Marisello
2. Accused denied committing the offence. The case was fixed for hearing on numerous occasions but as at December 11, 2023 when the prosecution closed its case, only the investigating officer had testified.
3. The trial court record reveals that Accused was charged over 2 ½ years ago and has faithfully attended court. At the time of closing its case, Ms. Rita for the prosecution informed court that the other witnesses could not be traced.
4. Right to life is protected by article 26 of *the Constitution* and can only be taken away under the circumstances provided therein. It therefore means that every homicide is unlawful unless authorized by law or excusable under the law. (See *Guzambizi Wesonga v Republic* [1948] 15 EACA 63).
5. It is unfortunate that this court has been denied the opportunity to determine how the life of Jeremiah Marisello was taken away but since justice denied is justice denied, I find that the interest of justice demand that Accused be acquitted.
6. Consequently, under the Provisions of section 306 (1) of the [Criminal Procedure Code](#), Accused is hereby found not guilty and it is ordered that he be set at liberty unless otherwise lawfully held.



**DATED THIS 20<sup>TH</sup> DAY OF DECEMBER 2023**

**WAMAE. T. W. CHERERE**

**JUDGE**

