



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CONSOLIDATED CRIMINAL CASES NOS. 13 & 41 OF 2012
[FORMERLY NYERI HCCR CASE NO. 14 OF 2012]

REPUBLIC.....PROSECUTOR

VERSUS

HUMPHREY WAITHAKA MACHARIA.....1ST ACCUSED

JOHN KAMAU MACHARIA.....2ND ACCUSED

RULING

1. The two accused persons are charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The particulars are that on the 3rd of November 2010 at Kiguru village, Kaganda Sub-Location within Murang'a County, they murdered *Esbon Macharia Gichuhi*.
3. They pleaded *not guilty*. The prosecution managed to call only *three* witnesses.
4. Learned counsel for the accused and the Republic opted not to file submissions.
5. The two accused persons are *sons* of the *deceased*. Their *mother* Jane Gachambi (PW1) testified that on the material day, she saw *both* accused and their elder brother *Duncan Gichuhi* assaulting the deceased with thick pieces of wood. They were hitting him on the head and hands. The accused fell to the ground but the assault continued.
6. PW1 moved away to a safe distance and started screaming. Some neighbours responded but they were afraid to enter the homestead. She informed the village elder, Stanley Njoroge (PW2). When they returned to the compound, the deceased was dead and the accused had disappeared. His hands were broken; and, he had suffered other injuries on the head, face and mouth.
7. Another of the deceased's son, Joseph Gacheru (PW3) testified that on 11th November 2010, he identified the body at Muriranjas District Hospital Mortuary for post-mortem purposes. He said the body was later interred.
8. Applying the test in *Bhatt v Republic* [1957] E.A. 332; and, on the digest of the evidence of the *three* witnesses, I am persuaded that the Republic has established a case requiring an *explanation* by both accused persons.
9. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place *both* accused on their defence.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 29th day of November 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Both accused persons.

Mr. Kamau holding brief for Mr. Mwaniki for both accused persons.

Mr. S. Mutinda for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.