

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 48 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JACOB MWAMANZI MBITI.....ACCUSED

R U L I N G

1. **Jacob Mwamanzi Mbiti** the Accused, is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that on the night of **7th** and **8th May, 2014** at **Mbitini Suc-Location, Mbitini Location in Kisasi District** within **Kitui County** murdered **Phylis Kitonga**(Deceased).

2. Facts of the case were that on the **7th** day of **May, 2014**, PW1 **Eammaculate Mutuku** escorted the Deceased to a clinic owned by the Accused. He took her to one of the rooms and he was the attending physician. Two (2) hours later the Accused came out of the room. On hearing the Deceased crying PW1 entered the room and found her bleeding from her private parts. The Accused returned to the room and PW1 went to wait outside. Three (3) hours later he came out and said that the Deceased had passed on. The Accused got a motor-vehicle that was to move the body but as they carried her into the motor-vehicle the police arrived and arrested all of them. PW1 and the Accused were in police custody for two (2) days. A postmortem on the body was conducted by PW4 **Dr. Mutisya Cosmas** who formed the opinion that the cause of death was haemorrhagic shock caused by incomplete abortion.

3. At the close of the Prosecution, as stated in the case of **Republic vs. Jagjivan M. Patel and Others 1 TLR 85** all the Court has to do is decide whether a case is made out against the Accused just sufficiently to require him to make a defence. The Court is not required at this stage to apply its mind in deciding finally whether the evidence is worth of credit as whether it is weighty enough to prove the case conclusively, beyond reasonable doubt.

4. At the close of the Prosecution's case evidence adduced points at the Accused as the person who was attending to the Deceased prior to being pronounced dead. This evidence is sufficient to have the Accused called upon to adduce evidence in his defence pursuant to the provision of **Section 306(2)** of the **Criminal Procedure Code**.

5. It is so ordered.

Dated, Signed and Delivered at Kitui this 31st day of July, 2018.

L. N. MUTENDE

JUDGE