

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 195 OF 2017

REPUBLIC.....APPELLANT

-VERSUS-

MUSEMBI WAMBUA NDUKU.....RESPONDENT

RULING

INTRODUCTION

1. The accused was charged with offence of Murder contrary to Section 203 as read with Section 204 Penal Code.
2. Particulars being that on 11/03/2016 at Kilungu village, Kikumbulyu, Location Kibwezi District Makueni County murdered Joseph Mutuku Wambua.
3. The accused pleaded not guilty and the matter went into trial. At the close of the prosecution case the prosecution had called PW2 witnesses namely, the mother of deceased Mwikali Wambua and PW3 Linet Kasyoka cousin to the accused who witnessed the accused attack the deceased with a stick.
4. PW1, Pascalina Ndinda Mutuku deceased's wife went to the scene and found husband injured and rushed him to hospital but he died on the way due to the bleeding.
5. The accused was seen attacking the deceased by PW2 and PW3.
6. The court notes that the postmortem report was not produced however the absence of medical report does not mean that the offence of murder cannot be proved by other circumstantial evidence.
7. In **Ndungu-Vs- Republic [1985]KLR 497**, the appellant was convicted by the High Court without the benefit of any medical evidence. On appeal, the Court of Appeal held that;

“Although there are cases in which death can be established without medical evidence relating to its cause, as where there are obvious and grave injures medical evidence should still be adduced in such cases of the effect of such injuries as opinion expert evidence and as evidence supporting the cause of death alleged by the prosecution.”

8. In our case the deceased apparently died on the way to hospital due the injuries inflicted by the accused.
9. Thus the court finds that the accused has therefore a case to answer and is put on his defence.

SIGNED, DATED AND DELIVERED THIS 24TH DAY OF JULY 2018, IN OPEN COURT.

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C. KARIUKI

JUDGE