

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 28 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MUTISYA WAMBUA.....ACCUSED

RULING

1. **Mutisya Wambua**, 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 **8th day of March, 2014** at **Ndalani Village, Kalia Sub-location, Matinyani Location** within **Kitui County** he murdered **Wambua Ngutho** (Deceased).

2. Brief facts of the case are that on the **8th March, 2014**, the Deceased was found at his home having passed on. He had visible external injuries on the head. Internally the head had a depressed occipital fracture. The cause of death was stated to be a severe head injury with an intracranial hemorrhage and skull fracture. PW1 **Muema Nguthu** the Deceased's younger brother went to his home to find him injured. Some two (2) broken pieces of timber were next to his body. He found the Accused, a son of the Deceased pacing up and down making gestures with his hands raised up in the air. The matter was reported to the police who investigated the case and caused the Accused to be charged.

3. At this stage the Prosecution was required to establish a *prima facie* case warranting the Accused to be put on his defence. In the case of **Republic vs. Jagjvan M. Patel and Others, TLR 85** the Court stated thus:

“All the court has to decide at the close of evidence of the charge is whether a case made out against the Accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively beyond reasonable doubt. A ruling that there is a case would be justified, in my opinion, in a borderline case where the court, though not satisfied as to conclusiveness of the Prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”

4. Although there was no direct evidence as to who committed the act that resulted into the injuries the Deceased sustained and subsequently succumbed to, the Accused was placed at the scene of crime. Circumstantial evidence on record would point him as a person who should render an explanation in his defence.

5. In the result I find the Prosecution having adduced sufficient evidence requiring the Accused to defend himself pursuant to the provisions of **Section 306(2) of the Criminal Procedure Code**.

6. It is so ordered.

Dated, Signed and Delivered at Kitui this 26th day of April, 2017.

L. N. MUTENDE

JUDGE