

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 20 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MARY SAMMY.....1ST ACCUSED

KIMWELE NYOKA.....2ND ACCUSED

R U L I N G

1. **Mary Sammy** and **Kimwele Nyoka**, the 1st and 2nd Accused persons respectively, are 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 **25th day of April, 2011** at about **11.00 a.m.** at **Usenga Village, Kanzau Sub-location, Kisasi Location** of **Kitui District** within **Kitui County** jointly murdered **Kinyamasyo Mwet**i (Deceased).

2. Fact of case are that on the **20th April, 2011**, PW4, **Munanie Juma** a daughter-in-law of the Deceased was at home doing her usual chores when she heard screams emanating from the *kiosk* of the 1st Accused. She ran there and found the Deceased having fallen on the ground. The 1st Accused was counting money. The Deceased told her that the 1st Accused hit him with a stool. PW5 **Musembi Mutunga** went to the scene of the incident having been called by **Sammy**, the 1st Accused's husband. She heard the Deceased state that he was assaulted by the 1st Accused who used a stool as a weapon.

3. At the close of the Prosecution's case the fact of death was proved by evidence adduced by PW3, **Dr. Patrick Mutuku** who performed a postmortem on the body of the Deceased. He formed the opinion that the cause of death was cardiopulmonary collapse due to asphyxia.

4. Witnesses who testified were not eye witnesses. The information they had as to what transpired was what they heard from the Deceased. None of the witnesses mentioned the 2nd Accused as having committed an act that could have caused the death of the Deceased. If put on his defence and he decides not to render any explanation as to what transpired, this court directing its mind properly would not convict (**See Ramanlal Trambklal Bhatt vs. Republic (1957) EA 332**). In a nutshell, no *prima facie* case has been established requiring him to be put on his defence. Consequently, I return a verdict of not guilty in his respect. Accordingly, he is acquitted under **Section 306(1)** of the **Criminal Procedure Code**.

5. With regard to the 1st Accused, there is sufficient evidence requiring her to give an explanation as to what happened 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 17th day of August, 2016.

L. N. MUTENDE