

KTI.NO.115/2016

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 10 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT NACHOI.....ACCUSED

R U L I N G

1. **Robert Nachoi**, 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 **24th December, 2011** at **Kivani Market, Kivani Location** of **Makueni District** within **Makueni County** he murdered **Martin Musyoka Wambua** (Deceased).

2. Facts of case are that the Deceased, his brother, PW1, **Titus Matata Wambua**, brother-in-law, PW4, **Lewis Munyao Musyoka** and others went on a drinking spree. They left **Jamhuri Club** going to **Kivani** to meet their cousin. They missed them therefore decided to continue drinking alcohol at a nearby bar. At **10.00 p.m.** they boarded a Public Service Motor-vehicle. They disagreed with the conductor in the motor-vehicle and alighted. While at the bus stage a person who introduced himself as a Police Officer arrested the Deceased and PW4. They were taken to **Kivani Administration Police Camp**. **Lewis** and **Mathew** were placed in the cells. The Deceased followed the officer who arrested them and demanded for an explanation as to why they were placed in custody. He chased the Deceased. PW1 followed to find the Deceased having fallen off the cliff. PW9 **Dr. Fredrick Okinyi** conducted a postmortem on the Deceased's body and concluded that the cause of death was asphyxia due to pressure on the neck caused by manual strangulation.

3. The Accused was identified as the person who chased after the Deceased as he ran through the thicket prior to being found dead. Evidence adduced was circumstantial in nature but considering the fact that the pressure on the neck was caused by manual strangulation, circumstances that prevailed would require the Accused to explain what transpired in his defence.

4. Consequently I call upon the Accused to tender his defence pursuant to the provisions of **Section 306 (2)** of the **Criminal Procedure Code**.

5. It is so ordered.

Dated, Signed and Delivered at Kitui this 16th day of August, 2016.

L. N. MUTENDE

JUDGE