

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 11 OF 2013

STEPHEN MUTHUI KYALO.....PROSECUTOR

VERSUS

REPUBLIC.....ACCUSED

RULING

The accused stands charged with murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars of the offence are that on 27th June 2013 at Kathuri market KITOVOTO sub – location MUSYUNGWA Location in TSEIKURU district within Kitui County murdered Munyoki Mwinzi.

The hearing of the case commenced in 2014. The prosecution called five (5) witnesses before closing their case on 5th May 2016. By the time the prosecution closed its case, Dr. Abdalla Mohamed (PW5) had testified and produced the post mortem form on the deceased Munyoki Mwinzi on behalf of his colleague Dr. Indumwa who was said to be on study leave. The cause of death was described in the post mortem form.

Thereafter, the prosecution closed its case, though the Prosecuting Counsel Mr. Okemwa indicated that he had wanted to call a doctor Kioko who prepared a P3 form, as the Dr. Abdalla PW5 who testified, had not worked with Dr. Kioko who was said to be on study leave.

I have considered the evidence on record. Though Dr. Kioko was not called to produce a P3 form, I am of the view that on the evidence on record and the post mortem form produced, the prosecution established a prima facie case entitling this court to put the accused person on his defence. I find that the accused has a case to answer.

I thus put the accused person on his defence, and explain to him the options available to him in his defence in accordance with the provisions of section 211 of the Criminal Procedure Code (Cap. 75).

Dated and delivered at Garissa this 16th August, 2016

GEORGE DULU

JUDGE