



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 16 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MWASYA MBUNGI.....ACCUSED

R U L I N G

1. The Accused, **David Mwasya Mbungi** 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 **26<sup>th</sup>** day of **June, 2015** at **Makotoni Village, Mbarani Sub-location** of **Kyuso Sub-county** within **Kitui County** he murdered **Mary Kakunyi Mbungi** (Deceased).

2. To be placed on his defence the Prosecution is required to establish a *prima facie* case against the Accused. Such case was stated in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332** to be;

***“..... the case which on full consideration might possibly be thought sufficient to sustain a conviction ..... at least it must mean one on which a reasonable Tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”***

3. At the close of the Prosecution case the fact of death is established. An autopsy done on the body of the Deceased established the cause of death having been haemorrhage and intracranial haemorrhage due to multiple cuts on the head.

4. In the matter, the Deceased was the Accused’s mother. They had regular quarrels over land. On the **26<sup>th</sup>** day of **June, 2015**, PW1 **David Munyoki Kilunde** and PW2 **Esther Mbaadi** his wife were on the farm when they heard them quarreling. PW1 a nephew to the Accused and grandson of the Deceased on going to the Deceased’s home found her lying down bleeding while the Accused was walking away carrying a panga. He chased after him but he ran and disappeared. He reported the matter to PW3 **Joel Muthui Maanzi** the area Assistant Chief who notified the police. A search was mounted. The Accused was arrested the following day and handed over to the police.

5. Although the Accused was not seen in the act of committing the act that caused the death of the Deceased, circumstances that prevailed at the point the Deceased was found injured and the conduct of the Accused as stated would require him to give an explanation of what transpired.

6. In the premises, the Prosecution has established a *prima facie* case requiring him to be placed on his defence pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

7. It is so ordered.

**Dated, Signed and Delivered at Kitui this 22<sup>nd</sup> day of September, 2016.**

**L. N. MUTENDE**

**JUDGE**