

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 17 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

GERALD MUA NTHIWAACCUSED

RULING

1. **Gerald Mua Nthiwa** (*the accused*) is charged with the offence of **Murder** Contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Particulars of the offence are that on the 29th day of February, 2008 at **Kikima Market, Mutitie** Sub location in **Makueni** District within **Eastern** Province murdered **Musuu Mbithe**(Deceased).
2. At the close of the Prosecution's case the fact of death was proved by evidence of **PW6, Dr. John Mutunga** who did a postmortem on the body of the deceased and formed an opinion that the cause of his death was cardiopulmonary arrest secondary to severe head injury.
3. Evidence adduced by PW1 amounts to a dying declaration made by the deceased relating to his death. There is also circumstantial evidence adduced by PW3 tending to connect the accused with the perpetration of offence.
4. In the celebrated case of **Ramanlal Trambaklal Bhatt versus Republic [1957] E.A. 332**, a prima facie is established when-

“A reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

5. Evidence adduced so far is sufficient to have the accused convicted if he offers no defence. Accordingly, he is called upon to defend himself as provided by **Section 306(2)** of the **Criminal Procedure Code**.
6. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 18TH day FEBRUARY, 2015.

L.N. MUTENDE

JUDGE