

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 17 OF 2011

REPUBLIC PROSECUTION

VERSUS

KITONGA NZOKA ACCUSED

RULING

1. **Kitonga Nzoka** hereinafter “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 11th March, 2011 at around 7.00 p.m. at Wikithuki sub-location, Kyethani Location of Mwingi District within Kitui County murdered KANINI MUTE MI”**.

2. It was the prosecution’s case that the accused was PW 1’s employee (farmhand). On the 11th March 2011, the deceased, PW 1’s aunt was at home having paid her a visit. At about 7.00 p.m. the accused started praying for her alleging that she was possessed with evil spirits. He seized her neck and continued hitting her until she fell down. PW 7 the Doctor who eventually performed a post mortem on her body formed an opinion that the cause of death was cardiopulmonary arrest secondary to asphyxia due to respiratory failure.
3. The accused person’s act of holding the deceased’s neck and strangling it was consistent to the kind of injury that the deceased sustained, namely disconnection of the thyroid cartilage.
4. Therefore, at the close of the prosecution’s case there was sufficient evidence requiring the accused being put on his defence to give an explanation of what prompted him to act in a manner that was unlawful.

In the premises I call upon him to defend himself pursuant to the provisions of section 306(2) of the CPC.

5. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 20TH day of MAY, 2015.

L.N. MUTENDE

JUDGE