

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO 75 OF 2011

REPUBLIC STATE

VERSUS

NDUNDA KITHEKU ACCUSED

R U L I N G

1. **NDUNDA KITHEKU**, hereinafter “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 17th December 2011 at Kivuthu Market, Kavuthu sub-location, Kavuthu Location of Mbitini Division within Makueni County murdered MATHITU MUTONGA (deceased).**

2. The facts of the case were that on the 16th December 2011 at about 5.00 p.m. the accused was at Kililini Bar, Kavutha, where he drank Viesta Wine and he left. At about midnight, **PW 1 Emma Muthee Nzioki** the bar attendant was woken up by Kioko, a watchman who sought assistance. He needed a piece of cloth that they could use to tie the deceased who was injured. She followed the watchman and found the deceased having been injured. He told her that he had been stabbed by the fool of Kitheku. She interpreted that to mean a person who was deaf.

3. **PW 2 Sammy Muthemba** learnt of the incident. He found his son, the deceased, still alive who told him that Ndunda had stabbed him. The accused person who was dumb and son of Kitheku was arrested and charged.

In the case of **Ramanlal Bhatt vs Republic (1957) EA 322** it was held that:-

“A prima facie case is not one that is proved beyond reasonable doubt but a case where a reasonable tribunal properly directing its mind on the law and evidence could convict if no reasonable explanation is offered by the defence”.

4. Evidence adduced herein is sufficient to require the accused to be placed on his defence. Accordingly he is called upon to address the court in accordance with **Section 306(2)** of the **Criminal Procedure Code**.

5. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 30th day of

JULY, 2015.

L. N. MUTENDE

JUDGE