



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 64 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

SALIM NGUTHU MULWA.....1<sup>ST</sup> ACCUSED

MATHEW MAKAU MUNYITHYA.....2<sup>ND</sup> ACCUSED

R U L I N G

1. **Salim Nguthu Mulwa** and **Mathew Makau Munyithya** hereinafter “the Accused 1” and “Accused 2” respectively are 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 **24<sup>th</sup>** day of **March, 2012** at **Kyambusya Village**, within **Kyambusya Sub-location, Kalima Location** in **Matinyani District** within **Kitui County**, jointly murdered **Rose Muteti** (deceased).
2. The case as presented by the prosecution is that people who live near **Kayo River** were woken up at about 5.00 a.m. by screams. Some of them including PW1 **Ambrose Ngala Mabindu** and PW2 **Ekendu Mabindu** answered the call of distress. They found accused 1 and accused 2 at the scene at **Kayo River Bed**. The deceased was lying at the river bed having sustained a deep cut on her right leg. Accused 1 was there armed with a catapult while accused 2 had a wooden club. Accused 1 was found in the act of hitting her with a stone as the deceased begged for forgiveness. All over sudden she stopped responding.
3. The administrators and ultimately the police were called. The body was later moved to Kitui District Hospital. An autopsy carried out on the body revealed that she died of massive haemorrhage secondary to severed popliteal artery. This was proof of death.
4. The accused persons having been placed at the scene of the incident where the deceased was found dead, is sufficient evidence requiring them to defend themselves pursuant to the provisions of **Section 306 (2)** of the **Criminal Procedure Code**.
5. It is so ordered.

**Dated, Signed and Delivered at Kitui this 21<sup>st</sup> day of October, 2015**

**L. N. MUTENDE**

**JUDGE**