

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 9 OF 2008

REPUBLIC

VERSUS

- 1. PAUL NZIOKA MUNYAO**
- 2. JOHNSTONE MAKAU MUTUA ACCUSED**

R U L I N G

- 1. Paul Nzioka Munyao, Johnstone Makau Mutua, the accused persons are charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars thereof being that on the 14th day of January 2008 at Kakalya village, Kalama Location in Machakos District within the Eastern Province murdered Michael Mativo Kiseli.**
- 2. At the conclusion of the case presented by the State, PW1 Ann Nguku Makau identified the accused persons herein as persons who assaulted them while she was in the company of the deceased. The accused persons were also said to have been found in possession of a cellphone, watch and open-shoes the deceased possessed on the fateful date. This kind of evidence would require to be explained away. The evidence adduced so far is so cogent that any tribunal directing its mind to the law would reach a conviction even if an explanation is not given by the defence. (See Ramanlal T. Bhatt –versus- Republic (1957) E.A. 332). I, therefore, find a *prima facie* case having been established by the prosecution which requires the accused persons to address in court on their defences pursuant to section 306 (2) of the Criminal Procedure Code.**

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L. MUTENDE

JUDGE

Dated and delivered at Machakos this 17th day of January 2014.

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L. MUTENDE

JUDGE