

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO.4 OF 2010

REPUBLIC PROSECUTOR

VERSUS

MALOMBE MULI ACCUSED

RULING

1. **Malombe Muli**, 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 being that on the nights of 16th and 17th November 2005 at about midnight at Nzakame village, Kyangwithia West location in Kitui District within the Eastern province murdered **Kelvin Nzisa**.
2. At the conclusion of the prosecution's case evidence adduced established that the accused who was separated with the mother to the deceased went to her mother's house where they were sleeping, forcibly opened the door and used a sword to stab the deceased. A postmortem conducted on the body of the deceased revealed that the deceased had a stab wound on the head. The cause of death was severe head injury. There was bleeding into the brain.
3. This is a case where any reasonable tribunal, properly directing its mind to law and evidence adduced so far would return a verdict of guilty even if no explanation was tendered in defence. Therefore a prima facie case warranting the accused being put on his defence has been established. **(See Ramanlal T. Bhatt Versus Republic (1957) E.A. 332).**
4. The accused shall be required to defend himself in accordance with Section 306(2) of the Criminal Procedure Code.

DATED, SIGNED and DELIVERED at MACHAKOS this 8TH day of APRIL, 2014.

L.N. MUTENDE

JUDGE