

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 59 OF 2007

REPUBLIC RESPONDENT

VERSUS

KAMAMI MWINDE ACCUSED/APPLICANT

RULING

The Accused, **Kamami Mwinde**, is charged with two counts of murder contrary to **section 203** and **section 204** of the **Penal Code**.

The particulars of the offence are that on the 31st day of August 2007 at **Masesini Sub-Location** in **Kitui District** within **Eastern Province** murdered **Mavuti Matei**.

The Accused was arraigned in court on 6/11/07. He pleaded not guilty.

This is the sixth year this case has been pending before this court. I am the sixth judge to preside over this trial. Only one witness testified on 23/11/10. The prosecution appears to have been unable to secure the attendance of their witnesses.

This court has accommodated the prosecution on all the three hearing dates fixed before me on 17/1/13, 24/4/2013 and 18/6/13 and allowed further adjournment but the prosecution was unable to secure the attendance of their witnesses.

Finally on 20/6/13 the court rejected any further applications for adjournment. The prosecution then stated that they **“leave the matter to the court.”**

The court cannot go out to bond witnesses. This is the prosecution case. Having rejected any further applications for adjournment and there being no sufficient evidence on record, I dismiss the prosecution case. The Accused is acquitted under **Section 306 (1)** of the **Criminal Procedure Code**.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 20th day of September 2013.

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