



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL CASE NO. 30 OF 2010**

**REPUBLIC**

**VERSUS**

**JOSEPH WAMBUA MUTUA ALIAS RASTA ..... ACCUSED**

**RULING**

1. **Joseph Wambua Mutua, alias Rasta** is 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 1<sup>st</sup> day of May 2010 at **Ndithini village, Kiteta Location**, within **Mbooni East District** of the **Eastern Province** murdered **Mutinda Wambua**.
2. At the close of the prosecution's case evidence was adduced by PW4 **Stephen Mutiso** who was woken up at 11.30 p.m. by noises emanating from the accused's house. He went there to find the accused arguing with the deceased. He witnessed the accused hit the deceased with a walking stick on the head which made him unconscious. Consequently he died. The cause of death per the postmortem carried out was intracerebral haemorrhage due to a fractured skull as a result of an assault.
3. It was submitted by the defence counsel that evidence on record did not establish a case of murder. The defence had offered to plead to a lesser charge of manslaughter.
4. A consideration of evidence adduced establishes a *prima facie* case as laid down in the case of **Ramanlal T. Bhatt versus Republic (1957) EA 322** where it was stated that:-

**“...it may not be easy to describe what it meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”**

5. In the premises there is evidence requiring the accused to defend himself in accordance with **section 306 (2)** of the **Criminal Procedure Code**.

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**L. MUTENDE**

**JUDGE**

**Dated and delivered at Machakos this 17<sup>th</sup> day of December 2013.**

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**L. MUTENDE**

**JUDGE**