



REPUBLIC OF KENYA



**Republic v Mathenge (Criminal Case 27 of 2018)
[2025] KEHC 5905 (KLR) (14 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 5905 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 27 OF 2018
TM MATHEKA, J
JANUARY 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MUTIE MATHENGE ACCUSED

RULING

1. Mutie Mathenge is charged with the offence of murder contrary to section 203 as read with section 204 of the *penal code* chapter 63 of the laws of Kenya. The particulars of this charge are that on the 1st day of December 2018 at Mukuku Village in Mbooni East Sub County within Makueni he murdered Michael Mwendwa Mutheu.
2. At the first appearance the accused person could not take plea because the mental health assessment report indicated that he was not fit to plead. He was committed to Mathare Hospital for treatment on the 22nd of May 2019. Thereafter he appeared on the 21st of November 2019 and the report was that he was fit to plead but could not do so because he did not have counsel. He took plea on the 15th of January 2020 and pleaded not guilty. He was represented by Mr Kioko.
3. Thereafter, the matter proceeded before Hon. Justice Dulu who heard PW1, PW2 and PW 3. When I took over the matter I heard PW4, PW5, PW 6 and PW 7.
4. At the close of the case for the prosecution the issue for determination is whether the prosecution has established a case to warrant the accused person being dealt with in accordance with the provisions of section 306 of the *Criminal Procedure Code*.
5. As the record will show , there was an error on its face in that when counsel put in submissions for the accused person he requested for a judgment date yet the accused person had not been put on his defence. It follows therefor that the matter comes up for ruling under s. 306 of the *CPC*.



6. Section 306 provides *inter alia*

Close of case for prosecution

- (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
 - (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.
7. The court is required to consider the evidence on record and make a determination whether or not the prosecution has established a case to place the accused person on his defense or whether the prosecution has failed to do so and for the court to enter a finding of not guilty.
 8. The case for the prosecution is that the deceased was aged 10 years at the time of this offence. He was the son of the brother to the accused person . On the material day the deceased and his cousin PW2 were playing outside when the accused is said to have approached them while holding a stick and demanded to know from the deceased why his (deceased's) father was disturbing the accused . The accused hit the deceased on the head and on the back and the child fell down bleeding from the nose. This was witnessed by PW2 and PW 4 .PW4 is one who assisted to disarm the accused and called for help. Neighbors came and took the child to hospital while they are accused was tied up with ropes and then taken to the nearest police station.
 9. The counsel for the accused did file submissions but a perusal of them same reveals that they were in the nature of final submissions.
 10. This evidence provides eyewitness evidence that places the accused at the scene and also as the person who assaulted the deceased. The weapon was recovered.
 11. The post mortem report indicates that the cause of death was from severe head injury caused by a blunt object. Clearly not a natural cause.
 12. From the eyewitness evidence coupled with the post mortem evidence there is prima facie evidence sufficient to warrant the accused person to be placed on his defence. The reasonable conclusion is that all this adds up to a prima facie evidence to warrant the accused being put on his defence in accordance with s. 306(2) of the [Criminal Procedure Code](#).
 13. The accused will be put on his defence.
 14. Orders accordingly

DATED, SIGNED AND DELIVERED ON 14TH JANUARY 2025

MUMBUA T MATHEKA J



Accused

Ms Nelima/ Chris CA

Kazungu for state

Mr. Mutuku holding for Mr Judah Kioko for accused

Proceedings

Mr. Mutuku- I do not have further instructions but we can take date for DHG

CT DHG on 27th March 2025

M for DR on 20th February. 2025

