



**Republic v Muli & another (Criminal Case 16 of 2017)
[2024] KEHC 4703 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE 16 OF 2017
SN MUTUKU, J
APRIL 4, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BERNARD KING’OO MULI 1ST ACCUSED

MAGDALINE NDUNGE MUTISO 2ND ACCUSED

RULING

1. Bernard King’oo Muli and Magdaline Ndenge Mutiso are jointly charged with murder contrary to section 203 read with section 204 of the *Penal Code*. The particulars of the charge are that on the night of October 25, 2017 at an unknown time and place within the Republic of Kenya, they jointly murdered Purity Mumbua Mwangangi. The two pleaded not guilty to the charge.
2. The prosecution called a total of seventeen (17) witnesses in a trial that was conducted by three different judges. The trial commenced on October 30, 2018 before Hon. Mr. Justice Nyakundi who took evidence of two (2) witnesses. The Judge was transferred before concluding the case. on July 4, 2019 the trial proceeded before Hon. Mr. Justice Mwita who took evidence of seven (7) witnesses. He, too, did not conclude the trial.
3. I took over the conduct of this case on October 26, 2021 and in total, I took evidence from eight (8) witnesses. At the close of the prosecution case parties opted not to file submissions although at first, they had hinted they wished to file submissions.



4. At this stage of the trial, I am required to examine all the evidence tendered by the prosecution witnesses, subject to analysis and the law and decide in accordance with section 306 of the *Criminal Procedure Code*. Under section 306(2) of the *Criminal Procedure Code* provides thus:

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.

5. I have read, understood and analyzed all the evidence of the 17 witnesses who have testified. The deceased went missing on the October 25, 2027. Her body was found on October 26, 2017 at B2 Yatta Ranching Cooperative Society Ltd in Lower Yatta, Kitui County. It was tied with a strap to a tree. The accused persons are implicated in the death of the deceased through circumstantial evidence in the form of mobile telephone involvement.
6. It is my considered view after careful consideration of the evidence tendered that each of the accused persons has a case to answer. It is for that reason that I make a finding that each accused person must be placed on his/her defence as required under Section 306(2) of the *Criminal Procedure Code*. The accused persons are hereby informed of their right to call evidence in their defence and to give that evidence by taking oath or without taking oath. They are also informed of their right to call witnesses in their defence.
7. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 4TH APRIL 2024.

S. N. MUTUKU

JUDGE

