



**Musee v Republic (Criminal Case 63 of 2016)
[2023] KEHC 22490 (KLR) (Crim) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 63 OF 2016
LN MUTENDE, J
SEPTEMBER 21, 2023**

BETWEEN

JOHN KIOKO MUSEE ACCUSED

AND

REPUBLIC PROSECUTION

RULING

1. John Kioko Musee, the accused, is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* cap. 63 Laws of Kenya. Particulars of the offence being that on the night of June 17, 2016 at Komarock Estate Phase 3 B in Nairobi East Sub-County, within Nairobi County, he murdered Francis Mwaanza Mutisya Brown.
2. At the close of the prosecution's case evidence was adduced of the accused having had an altercation with the deceased. Subsequently the deceased was found lying at a roundabout in a critical condition. He was rushed to Komarock Modern Hospital and his siblings and wife were informed.
3. The deceased was taken to Kenyatta National Hospital where he succumbed. A postmortem conducted established that the cause of death was head injury due to blunt force trauma.
4. The question would be whether a prima facie case has been established requiring the accused to be put on his defence. In the case of *R T Bhatt v R* (1957) EA 332,335, it was held that a prima facie case is where a reasonable tribunal properly directing its mind to the law and evidence, could convict if no explanation was offered by the defence.
5. Evidence adduced established that prior to passing on, the deceased made oral statements as to the circumstances that led to his death and the assailant; whom he mentioned as the accused.



6. This could amount to dying declaration subject to the rule of law. (See section 33(a) of the *Evidence Act*; *Phillip Nzaka Watu v Republic* (2016) eKLR).
7. From the foregoing, evidence adduced requires the accused to tender evidence in his defence pursuant to the provision of Section 306(2) of the *Criminal Procedure Code* (CPC).
8. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI, THIS 21ST DAY OF SEPTEMBER, 2023.**

L. N. MUTENDE

JUDGE

