



**REPUBLIC OF KENYA**

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

**HCCR NO. 195 OF 2017**

**REPUBLIC.....APPELLANT**

**-VERSUS-**

**MUSEMBI WAMBUA NDUKU..... RESPONDENT**

**RULING**

**INTRODUCTION**

1. The accused was charged with offence of Murder contrary to Section 203 as read with Section 204 Penal Code.
2. Particulars being that on 11/03/2015 at Kilungu village, Kikumbulyu, Location Kibwezi District Makueni County murdered Joseph Mutuku Wambua.
3. The accused pleaded not guilty and the matter went into trial.
4. At the close of the prosecution case the prosecution had called PW2 witnesses namely, the mother of deceased Mwikali Wambua and PW3 Linet Kasyoka cousin to the accused who witnessed the accused attack the deceased with a stick.
5. PW1, Pascalina Ndinda Mutuku deceased's wife went to the scene and found husband injured and rushed him to hospital but he died on the way due to the bleeding. The accused was seen attacking the deceased by PW2 and PW3.
6. The court notes that the postmortem report was not produced. However the absence of medical report does not mean that the offence of murder cannot be proved by other circumstantial evidence.
7. In **Ndungu-Vs- Republic [1985]eKLR 497**, the Appellant was convicted by the High Court without the benefit of any medical evidence. On appeal, the Court of Appeal held that;

***“Although there are cases in which death can be established without medical evidence relating to its cause, as where there are obvious and grave injuries medical evidence should still be adduced in such cases of the effect of such injuries as opinion expert evidence and as evidence supporting the cause of death alleged by the prosecution.”***

8. In our case the deceased apparently died on the way to hospital due the injuries inflicted by the accused.
9. Thus the court finds that the accused has therefore a case to answer and is put on his defence.

**SIGNED, DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF FEBRUARY 2019, IN OPEN COURT.**

.....

**HON. C. KARIUKI**

**JUDGE**