

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 46 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MWANIKI MWANGANGI.....ACCUSED

R U L I N G

1. **Mwaniki Mwangangi**, 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 are that between **23rd and 25th June, 2014** at **Mathunzu Village, Kalive Sub-Location, Nzeluni Division, Migwani District** within **Kitui County** murdered **Gideon Wambua Sammy** (Deceased).

2. Facts of the case are that the decomposed body of the Deceased was found at **Muthunzu** in the bush on the **26th June, 2014**. A post-mortem done on the body revealed that he died of haemorrhagic shock, cut right and left ceratoid arteries and empty cardiac chamber caused by assault. Investigations carried out revealed that prior to the Deceased going missing he was in company of the Accused.

3. In the case of **Bhatt vs. Republic (1957) EA 332** the Court of Appeal stated thus:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether, there is some evidence, irrespective of its credibility or weight, sufficient to put accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence. It is may not be easy to define what is 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.”

4. At the close of the Prosecution’s case circumstantial evidence adduced points at the Accused as the person who may have caused the act that resulted into the death of the Deceased. Evidence adduced so far is sufficiently strong which requires the Accused to explain what transpired after he left with the Deceased.

5. In the premises I call upon him to render the explanation pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

6. It is so ordered.

Dated, Signed and Delivered at Kitui this 2nd day of May, 2019.

L. N. MUTENDE

JUDGE