

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL APPEAL CASE NO. 25/2017

REPUBLIC.....PROSECUTOR

VERSUS

MUEMA KIVWIA.....ACCUSED

RULING

1. **Muema Kivwia**, 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 on **13th December 2017** at **Koi village** in **Twambui Sublocation Malalani location** within **Kitui County** murdered **Kivwia Mwinzi (Deceased)**.

2. Facts of the case are that on **13th day of December 2017**, **PW1 Dorcas Mbuve Magati** was at home when the Accused, her husband, returned home while drunk, he assaulted his child **Mutie** who was unwell. As a result, he ran to his grandfather's place. PW1 escaped the accused's wrath and ran to seek assistance from their neighbours. PW2 **Nicholas Mutunga Mbuvi** run to the scene to find the Accused sitting on his father, the deceased, who lay on the ground. He held his neck by the throat and threatened to finish him and turn to him (**PW2**). He went back home as a result.

3. The following morning, the deceased lay at the same place. The sub-chief was notified and he reported the matter to the Police. **PW5 No. 241329 APC. Joel Kosgei** visited the scene and found the Accused asleep inside the house. He arrested him. **PW8 No. 67121 Sergeant Solomon Mwendwa** visited the scene, and caused the body of the deceased to be moved from the scene to the Morgue. He also re-arrested the Accused.

4. At the close of the prosecution's case, a post mortem conducted established the cause of death to be asphyxia, secondary to strangulation. Going by the evidence of **PW2**, the Accused was the person seen hold the deceased's throat.

5. After full consideration of the evidence adduced, it points to the Accused as the person who committed the act that may have resulted into the death of the deceased.

6. Therefore I call upon him to defend himself pursuant to the provisions of Section 306(2) of the Criminal Procedure Code.

7. It is so ordered.

Dated, Signed and Delivered at Kitui this 11th day of September, 2019

L.N. MUTENDE

JUDGE