



**REPUBLIC OF KENYA**

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

**HCCR NO. 121 OF 2017**

**(FORMERLY MACHAKOS HCCR NO. 12 OF 2014)**

**REPUBLIC.....PROSECUTION**

**-VERSUS-**

**BENSON MUVEVI KYEVA.....ACCUSED**

**RULING**

1. The accused **Benson Muvevi Kyeve** stands charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that the accused on the night 11<sup>th</sup> and 12<sup>th</sup> day of February, 2014 at Mwitasyano village, Nthongoni sub-location, Mangelete location in Kibwezi district within Makueni county murdered **Joshua Mutie Mumina**.
2. The accused was first arraigned in court on 27<sup>th</sup> February, 2014. The first and only witness testified on 8<sup>th</sup> July, 2014 before Justice B. Thurania Jaden, at Machakos High court. The said witness is Muthoka Ndunda who is a businessman and operated Ngungani bar at Mwitasyano village. He did not witness the killing but confirmed that the accused and the deceased had been his customers at the bar on 11<sup>th</sup> February, 2014.
3. The accused had been joined by the deceased who was very drunk. He had heard the deceased and accused quarrel over buying of beer. He left the bar for his home later that night leaving the accused, deceased and Kasee outside the door of the bar near the shops.
4. The next morning, he received a call from one of the shopkeepers informing him that the deceased's body was lying outside his bar. A brother of the deceased stopped him from going to the police station. One is left to wonder why the deceased's brother did that.
5. No other witness testified and the prosecution closed the case on 24<sup>th</sup> September, 2019.
6. Besides the evidence of Pw1, there is no evidence to confirm the death of the deceased. There is no evidence from the family and the police. There was no post mortem to confirm the cause of death.
7. In short, there is no evidence that would make this court place the accused on his defence. I therefore find him not guilty and acquit him under Section 306(1) Criminal Procedure Code.

Orders accordingly

**DELIVERED, SIGNED & DATED THIS 1<sup>ST</sup> DAY OF OCTOBER, 2019, IN OPEN COURT AT MAKUENI.**

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**H. I. ONG'UDI**

**JUDGE**