

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 9 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KINYALILI MUSYOKA.....ACCUSED

R U L I N G

1. **Kinyalili Musyoka**, the Accused was arraigned in court and indicted with the offence of **Murder** Contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Particulars are that on diverse dates between **2nd day of March, 2013** and **15th May, 2013** at **Kyamukungu village, Kisaini Sublocation, Kisaini Location** in **Kitui District** within **Kitui County** murdered **Musemi Musyoka (deceased)**.

2. Facts of the case were that the Accused and deceased, cousins had a land dispute, the chairman of the clan having received the complaint sent family members including PW1, **Nicholas Ngei Mbuvi** to call the deceased. On arrival at the house of the deceased, it was burnt. As they wondered, they got information of a decomposing body of a human being near the fence of the deceased. There were signs of the person having been dragged from a toilet stated to be owned by the Accused. He was arrested and handed over to the police. Investigations conducted resulted into the indictment.

3. The fact of death was proved by the Doctor who conducted the postmortem who opined that the cause of death was **asphyxia** from **manual strangulation**.

4. PW2 **Khadijah Salim** a friend of the Accused who was staying at the house of the Accused then testified to the fact of the Accused having been working at the toilet with two (2) other individuals.

5. Circumstances that prevailed call upon the Accused to render an explanation as to what transpired. Therefore, I call upon him to defend himself 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 19th day of November, 2019.

L. N. MUTENDE

JUDGE