

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 30 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

VALIKI MWANZIA ALIAS KITHEKA VALIKI MWANZIA....ACCUSED

R U L I N G

1. **Valiki Mwanzia alias Kitheka Valiki Mwanzia** (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 the **28th day of July, 2014** at around **5.00 p.m.** at **Ndithini Village, in Kiangwa Sub-location, within Kitui County**, he murdered **Lenah John Mulonzia** (Deceased).

2. Facts of the case are that on the **28th day of July, 2014**, the Deceased, a wife of PW1 **John Mulonzia** was at their kiosk at about **4.00 p.m.** when the Accused who was in company of **Tito Ndambuki** passed by. They later returned at **5.30 p.m.** and provoked PW1 whom they accused of calling them thieves. The Accused used a catapult to hit him on the head with a stone. The Deceased intervened and snatched the Accused the catapult. **Tito Ndambuki** acted by giving a stone to the Accused who used it to hit the Deceased on the head. She was rushed to hospital and pronounced dead on arrival.

3. A postmortem was done on her body which established that the cause of death was severe head injury secondary to assault.

4. In the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 332** the Court stated that:

“The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution’s, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction..... The question whether there is a case to answer cannot depend only on whether there is ‘some’ evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence.”

5. The evidence adduced by the Prosecution identifying the Accused as the person who hit the Deceased on the head using a stone is not challenged. Therefore, I find the Prosecution having established a *prima facie* case warranting the Accused being put on his defence, 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 7th day of February, 2018.

L. N. MUTENDE

JUDGE