



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CRIMINAL CASE NO. 10 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PETER NGINYA MAINA.....1<sup>ST</sup> ACCUSED**

**SIRIAKO MAINA NGINYA.....2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused are charged with *murder* contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that on the night of 24<sup>th</sup> and 25<sup>th</sup> February 2011 at Kiawambeu Village, Muchungucha Sub-location, Mbiri Location within Murang'a County, they jointly murdered *John Gikungu Waweru*.
3. They pleaded *not guilty*. The prosecution called *three* witnesses.
4. I have considered the *direct* and *circumstantial* evidence surrounding the homicide.
5. I have paid heed to the evidence of PW2. She testified that on 24<sup>th</sup> February 2011 at *Ndikwe Bar*, she saw the two accused persons beat a man *unconscious*. She also stated that the two dragged the bleeding man outside the bar. When she saw the body of the deceased at a bridge the following day, she *claimed* it was that of the person assaulted by the accused.
6. There is also the testimony of PW3 that the deceased *may* have had an illicit affair with the wife of the 1<sup>st</sup> accused.
7. I am well guided by *Bhatt v Republic* [1957] E.A. 332, *R v Kipkering arap Koske & another* 16 EACA 135 (1949).
8. On the summation of the evidence of the *all* the *three* witnesses, I am persuaded that the Republic has established a *prima facie* case against both accused.
9. Accordingly, under the provisions of section 306 (2) of the *Criminal Procedure Code*, I put both accused on their *defence*.

It is so ordered.

**DATED, SIGNED and DELIVERED** at MURANG'A this 20<sup>th</sup> day of December 2018.

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

Accused.

Mr. Kinuthia for Mr. Mwaniki for the accused.

Ms. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.