

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 17 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

MWENDWA KILONZO.....ACCUSED

R U L I N G

1. **Mwendwa Kilonzo**, the Accused, is charged with the offence of **Murder** contrary to **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that on the **25th** day of **May, 2016** at **Kanzauwo Market, Nzambani Sub-County** within **Kitui County** he murdered **Bismark Musee** (Deceased).

2. Facts of the case were that **25th** day of **May, 2016** the Deceased was with the Accused who had carried him on a motorcycle. They disagreed and he hit him with a stone on the head. He went home and told PW1 **Rose Nduku Musee** about what transpired. He was taken for treatment but he died on the **3rd** day of **June, 2016**.

3. PW7 **Dr. Edward Kiatu** performed a postmortem on his body and formed the opinion that the cause of death was severe head injury secondary to subdural haematoma.

4. In the case of **Jagjivan M. Patel and Others 1 TLR 85** it was stated that:

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt a ruling that there is a case to answer would be justified. In my opinion, in a border line case where the court, though satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be though sufficient to sustain a conclusion.”

5. The Prosecution called evidence of witnesses who saw the Accused with the Deceased after he sustained the injury. He is placed at the scene of the incident. It behooves him to defend himself.

6. In the premises I find the Prosecution having established a *prima facie* case warranting him to defend himself. I therefore call upon him to do so 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 6th day of June, 2017.

L. N. MUTENDE

JUDGE