

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITUI
CRIMINAL CASE NO. 44 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MOKI MASINGA.....ACCUSED

R U L I N G

1. **Moki Masinga**, the 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 **8th** day of **September, 2013** at **Itiko Village, Itiko Sub-location, Mutito Location, Mutito District** within **Kitui County** murdered **Kithiki Munyitya** (deceased).

2. Facts of the case were that both the accused and deceased employees of PW3, **Michael Nyamae** returned home while drunk. They quarreled and struggled prior to retiring to their respective houses within their employer's homestead. Thereafter the accused ordered PW1 **Triza Mbithe Michael** and PW2 **Anita Mwende Nyamae** to lock themselves up inside the house. They rang PW3 and notified him. He went home to find the deceased lying down in a pool of blood.

3. The fact of death of the deceased was established by PW7 **Dr. Patrick Mutuku** who adduced evidence of a postmortem report made by **Dr. Christopher Wahinya** who performed the autopsy. He opined that the cause of death was severe head injury, and a depressed skull fracture. The injuries were occasioned by weapon(s) used by a person who acted in the circumstances.

4. Evidence adduced at the close of the Prosecution's case pointed at the accused as the person who most likely caused the death of the deceased. A tribunal properly directing its mind on the basis of evidence adduced so far would return a verdict of guilty even if no explanation is rendered in defence. **(See Ramanlal T. Bhatt V. Republic 1957 EA 332)**.

5. Consequently, I find a *prima facie* case having been established requiring 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 4th day of February, 2016.

L. N. MUTENDE

JUDGE