



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL CASE NO. 65 OF 2011**

**REPUBLIC.....STATE**

*versus*

**DAVID WAMBUA MUTHYOTUKU.....ACCUSED**

**RULING**

1. **David Wambua Muthyotuku**, hereinafter “**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 16<sup>th</sup> day of October, 2011 at Muuani Village, Maluma Sub-location, Nzambani Location of Kitui District within Kitui County, murdered Peninah Kabutha David (Deceased).**
2. At the close of the prosecution’s case the fact of death was proved by evidence adduced of a postmortem report. The doctor who conducted the autopsy, PW 2, Dr. Patrick Mutuku formed the opinion that the cause of death was cardiac arrest due to shock with internal haemorrhage due to a bruised liver.
3. PW 4 Musyoka David was an eye witness. He saw the deceased and the accused quarrelling. The accused pursued the deceased who went round the house. By the time he caught up with them, the deceased had fallen down and the accused was armed with a hammer, circumstantial evidence points at the accused as the person who committed the act that may have caused the death of the deceased.
4. In the premises the prosecution has established a prima facie case warranting the accused being put on his defence. He will therefore be required to defend himself pursuant to the provisions of section 306 (2) of the Criminal Procedure Code.
5. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 8<sup>th</sup> day of July, 2015.**

**L.N. MUTENDE**

**JUDGE**