

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 21 OF 2009

REPUBLICPROSECUTION

VERSUS

MULINGE MONI NGUSYI.....ACCUSED

R U L I N G

1. **Mulinge Moni Ngusyi** is charged with murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.

Particulars of the offence being that on the night of **30th September 2006** at **Kyaani village, Kaliambeu sub Location, Mbaani Location, Yathui Division** in **Machakos District** within the **Eastern Province** murdered **Kioko Mululi**.

2. At the close of the prosecution's case there was no direct evidence pointing at a particular individual as to who committed the offence but there was evidence of a blue jeans jacket stated to belong to the deceased which was lightly stained with human blood of **group A**. A sample of blood of the accused was examined and found to be of **group A**.
3. At this stage this court must establish if a prima facie case has been disclosed against the accused. In the case of **Ramanlal Trambakal Bhatt versus Republic (1957) E.A. 332** such a case was defined as one:

“A reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

4. This is a case where the court could convict on evidence adduced subject to the necessary caution if no explanation is tendered. In the circumstances it calls upon this court to have the accused 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 3RD day of DECEMBER , 2014.

L.N. MUTENDE

JUDGE