

No. 122/2013

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO.80 OF 2004

REPUBLIC.....PROSECUTOR

VERSUS

KITUKI MUTISYA.....ACCUSED

RULING

1. **Kituki Mutisya** hereinafter, the accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars thereof being that on the 14th April 2004 at Kambi ya Ndege village Kithimani location, Machakos District within Eastern province murdered **Wanza Matata**.
2. To establish the case, the State called 5 witnesses. PW1, **Leonard Matata Mbila** was away from home. He returned to find his daughter missing. A search carried out culminated into the body being found near the fence with injuries.
3. PW2, **No. 230747 CI. Sarah Koki** rearrested the accused and visited the scene. She found the deceased on the bed with visible injuries on the head.
4. PW3, **Dr. Simon Kioko Muli** carried out a post-mortem on the body of the deceased. He formed an opinion that the cause of death was Cardio Pulmonary arrest due to neck strangulation.
5. PW4, **Pascaline Nduko Mutunga** found the child already dead. PW5, **Stephen Kibuba Mbila** Assistant Chief got information regarding the death of the deceased from members of public. He went home and confirmed the child was dead.
6. At the close of the prosecution's case no witness adduced evidence to connect the accused with causation of the death of the deceased.
7. At this point pursuant to provisions of Section 306 of the Criminal Procedure Code, I have to determine if the prosecution has established a Prima facie case against the accused to warrant him being put on his defence. A prima facie case was defined in the case of **Ramanlal Bhatt versus Republic [1957] E.A, 334**, where it was stated thus:-

“...a prima facie is made out if at the close of the prosecution the case is merely one which in full consideration might be thought sufficient to sustain a conviction. This is perilously near sufficient that the court would be prepared to convict if no offence is made but hope that the defence will fill the gaps of the prosecution case.

Nor can we agree that the question whether there is a case to answer only depends on whether there is some evidence, irrespective of its credibility or weight sufficient to put the Accused on his defence. A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence”

8. This is a case where there was no iota of evidence to suggest that the accused caused the death of the deceased. PW2 said she investigated the case partly. She just got a report that the accused murdered the deceased but there was no evidence to establish the allegation. Without such evidence the accused cannot be put on his defence in order for him to fill in the gap left by the prosecution. In the premise, I find the accused not guilty. He should be released forthwith unless otherwise lawfully held.

9. Order accordingly.

DATED, SIGNED and DELIVERED at MACHAKOS this 6th day of NOVEMBER, 2013.

L.N. MUTENDE

JUDGE