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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL CASE NO. 24 OF 2018**

**REPUBLIC/STATE.....**  
**PROSECUTION**

***VERSUS***

**ANCETUS MUSYOKI WAKI alias Raila.....**  
**ACCUSED**

**RULING ON CASE TO ANSWER**

1. The accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence are that on 22<sup>nd</sup> August 2018 at Yathui Village, Kyangulumi Sub-location, Yathui Location, Mwala Sub-County within Machakos County the accused person murdered GEDION KATUMO MUSILI.
3. The accused person pleaded not guilty to the charge whereupon the prosecution called eight (8) witnesses.
4. The court heard that on the material day the deceased was in a club drinking with his friends when a fight ensued between them. That the deceased suffered injuries after he was hit in

the back. The blow felled him to the floor. The deceased was then taken to his home by a motor cycle rider but his condition deteriorated and he was taken to Wamunyu Dispensary and later to Machakos Level Five hospital where he succumbed to the injuries.

5. According to PW2 when he went to the scene upon hearing noise, he found three people fighting; the deceased was lying on the ground while one Nguli was fighting with the accused. He escorted the deceased up to his shop and paid a motor cycle rider kshs 50 to take him home.
6. PW3 confirmed that he was paid kshs 50 to take the deceased home. He stated that the deceased was drunk and incoherent and after dropping him off at his home he went away.
7. The only witness who claims to have witnessed the occurrence first hand was PW6. According to him, on that fateful day, at about 5pm, he was drinking with the deceased in a bar when the deceased stepped out to answer a telephone call. The deceased did not go back so he decided to go look for him. He stated that he traced the deceased to another bar where he was quarrelling and trading insults with the accused person. PW6 stated that they left to go back to the other bar and as they were on their way the deceased was suddenly hit on the back by Wambua. He fell to the ground.

He left to report the matter to a nearby police post but on going back he did not find the deceased as he had been taken home. It was PW6's testimony that he went to the deceased home and found lying on the floor of his sitting room unresponsive. He called his nephew and told him the deceased had been hit by Wambua. The next day he received news that he had died.

8. PW7 testified that on the fateful day he encountered the deceased near Miu Bar. They entered together and found the accused together with other people who were known to them. He stated that the two traded insults after which the accused left momentarily then came bar. He stated that he later heard that the accused beat the deceased but he himself did not witness it. He stated that he saw the deceased being put on a motor cycle to be taken home.

9. PW5 testified that they performed a post mortem on the deceased. He had multiple superficial skin injuries on the abdomen and chest. On the skull there was a fracture on the scalp and inside the skull there was a clot on the right side. Additionally, there was internal bleeding of the brain on the right side. The cause of death was due to bleeding to the head secondary to blunt force trauma.

10. As part of its evidence the prosecution produced a post mortem report to ascertain that the deceased died and the cause of death.
11. PW8 testified that they went to the scene of the crime which was Muuo Bar and interrogated the waiter who served the deceased and the accused. The waiter told them that there was a heated exchange between the accused and the deceased. After the exchange they left the bar and started walking towards their home. The accused then hit the deceased with his right hand and the deceased fell and landed on the back of his head. The accused was subsequently charged with this offence.
12. After the close of the prosecution's case, learned Counsel for the prosecution and the accused agreed to canvas the issue of whether the accused had a case to answer by way of written submissions.
13. Prosecution counsel submitted that the prosecution had adduced sufficient evidence to warrant this court to put the accused person on his defence. She submitted that the testimony of PW6 and PW2 placed the accused at the scene of the crime and the case against the accused had been proved beyond reasonable doubt. She urged this court to place the accused person on his defence.
14. Counsel for the accused on the other hand submitted that the prosecution had not adduced sufficient evidence to

prove the guilt of the accused as to warrant him to be placed on his defence. Counsel urged this court to acquit the accused.

15. **Section 306(1) of the Criminal Procedure Code**

provides that if at after the prosecution has closed its case the court considers that there is no evidence that the accused committed the offence then it should enter a finding of not guilty. The court should only require the accused to enter his defence where there is evidence that he committed the offence-**Section 306(2) of the Criminal Procedure Code.**

Therefore, at this stage, the point for determination is whether or not the prosecution has established a prima facie case sufficiently for the accused person to be put on his defence.

16. In the case of **Bhatt v Republic [1957] EA 332** the court defined a prima facie case as one **“on which a reasonable tribunal properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence.”**

17. The ingredients of the offence of murder are the death of the deceased, the cause of that death, malice aforethought and the identification of the accused as the perpetrator of the offence. The offence may be proved through direct evidence or circumstantial evidence.

18. In this case, the death of the deceased and the cause of that death are not in doubt as there is evidence by PW6

and other witnesses that the deceased died and that death was as a result of injuries to the head. The death and the cause of death are also corroborated by the post-mortem report. Therefore, there is no doubt that the death was by a human hand.

19. I have carefully considered the evidence and submissions by both sides and I am satisfied that there is evidence pointing to the accused as the perpetrator of the offence. In the premises this court shall require him to enter his defence.

**Ruling signed, dated and delivered virtually on this 14<sup>th</sup> day of November 2025.**

**E N MAINA  
JUDGE**

**IN PRESENCE OF:**

Mr. Mbindyo Advocate for accused

Ms Kaburu for the state

C/A: Geoffrey