



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL CASE NO. 18 OF 2017**

**REPUBLIC** .....

**PROSECUTOR**

***VERSUS***

**MACKDONALD KYALO MUSAU**  
**alias THEMANGE** .....

**ACCUSED**

**RULING**

1. By an information filed herein dated 4<sup>th</sup> July 2017, the accused person MackDonald Kyalo Musau *alias* Themange 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 charge are that on the night of 24<sup>th</sup>/25<sup>th</sup> June 2017, at Makadara area in Athi River Sub-County within Machakos County, murdered Mathew Muthiani.
3. The accused person pleaded not guilty to the charge following which the prosecution called seven (7) witnesses to prove its case. Subsequently, Learned Counsel for the parties

elected to make their arguments, pursuant to **Section 306(1) of the Criminal Procedure Code**, through written submissions.

4. At this stage this court is required merely to consider whether there is evidence that the accused person committed the offence in order for it to determine whether or not to acquit him under **Section 306(1) Criminal Procedure Code** or to call upon him to enter his defence as provided in **Section 306(2) of the Criminal Procedure Code**.

5. Having considered the evidence of the prosecution witnesses and rival submissions, I find the accused person has a case to answer and should enter his defence as provided under **Section 306 (1) of the Criminal Procedure Code** for the following reasons:

- The accused was seen stabbing the deceased by PW1 and PW2.
- PW2 testified that the accused asked her for a knife to stab the deceased.
- PW7 Pc. Fred Cherotich the Investigating officer received a distress call from a doctor manning a private clinic that a patient had been taken there with a stab wound in the stomach. He went there but found patient had been transferred to Shallom Hospital. He went to Shallom Hospital but patient was critical and could not talk and was being taken to Kenyatta National Hospital.

- Sammy Mutisya PW1 the watchman narrated to the Investigating officer what had happened.

6. Evidence of the prosecution witnesses are corroborated by the post mortem report which indicates that the cause of death was peritonitis following penetrating abdominal injury which was fatal.

7. In the upshot accused shall be required to enter his defence in accordance with **Section 306(2) of the Criminal procedure Code.**

Orders accordingly.

**Ruling Dated, Signed and Delivered Virtually on this 18<sup>th</sup> day of December, 2025.**

**E. N. MAINA  
JUDGE**

**IN THE PRESENCE OF:**

Ms Kaburu for State

No appearance for Nzisa Advocate for the accused

Accused person

Geoffrey - Court Assistant/Interpreter