



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. E032 OF 2022

REPUBLIC
PROSECUTOR

VERSUS

PETER KILONZO MWINZI

.....ACCUSED

RULING

1. By an information filed herein dated 28th November 2022, the accused person Peter Kilonzo Mwinzi 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 3rd day of October 2022 at Kakele village, Kinyau Sub-location, Kathiani Sub-County within Machakos County, murdered Andrew Musau Musembi.
3. The accused pleaded not guilty to the charge following which the prosecution called eleven (11) 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 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. I have carefully considered the evidence adduced so far, the rival submissions of counsel for the state and the accused, the cases cited and the law and my findings are as below:

(1) No direct evidence against the accused person. Circumstantial evidence that shoes of the deceased were found under his bed is weak. Can be explained on other exculpatory hypothesis since the investigating officer was categorical that the first time she visited his house they were not there and hence they must have been put there by someone.

(2) The stick found behind the compound in accused's house was forensically examined by Kipngetich Benard (PW7) a Government Analyst with twelve (12) years experience and it was not found with any blood hence no inculpatory

evidence. DNA of the accused was not found on the piece of wood or ginger nail clippings of the deceased.

(3) As for the investigating officer's evidence that the accused led her to the body that was discounted by the testimonies of village elder Moses Munyao Kituku (PW6) who stated that the body was discovered by a villager who reported to him. He in turn reported to the Assistant chief - one Juliana Katunge Kitilu who called the police. Moreover, the alleged statement of the accused is of no probative value as it was not taken as either a cautionary statement or as a confession. The officer PW9 was not in any event a chief Inspector of police and if she wished to rely on the alleged confession should have taken the accused to such officer as was qualified and competent to record a confession. Doubt that the accused did not kill the deceased arises from the evidence of PW6 - village elder Moses Kituku that on 4th October 2022 at 4 p.m. the accused went and asked him if he had seen the deceased. Also evidence of teacher Christopher Mutulu Kili (PW4) that he had been told that the deceased had attempted to commit suicide. This is instructive given the cause of death and evidence by his uncle Dominic Mwendwa Mutisya (PW1) that the deceased had said to him that it was better to die rather than go back to school. According to PW1 the deceased claimed the teachers in the school were against him and children were

laughing at him. The deceased's father PW2 confirmed that the accused told him that the deceased had taken a rope to kill himself.

4. Accused has no case to answer. Case based purely on suspicion which alone cannot sustain a conviction. Also evidence of PW10 James Kimuyu Muteti that the deceased was among the boys who had been to his house on 6th October 2022 meaning the deceased was seen alive after 3rd October 2022 contrary to the evidence of the investigating officer PW9.
5. To put the accused person on his defence when the evidence against him does not establish a prima facie case would be tantamount to asking him to prove his innocence hence shifting the burden of proof contrary to law. He is accordingly acquitted under **Section 306 (1) of the Criminal Procedure Code** and should be released forthwith unless otherwise lawfully held.

Orders accordingly.

Ruling Dated, Signed and Delivered Virtually on this 18th day of December, 2025.

**E. N. MAINA
JUDGE**

IN THE PRESENCE OF:

Ms Kaburu for State

Mr. Musioma for Katee for accused

Accused person

Geoffrey - Court Assistant/Interpreter

ORIGINAL