



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HIGH COURT CRIMINAL CASE NO. 13 OF 2020**

**REPUBLIC.....**  
**PROSECUTION**

**-VERSUS-**

**SILAS GITONGA alias MWANZIA NDUKU .....**  
**ACCUSED**

**RULING**

1. The accused person is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on 12/5/2020 at Thongoni village, Mangelete sub-location Nthongoni location in Kibwezi East Sub-county within Makueni County murdered Veronica Agnes Mueni.
2. He denied the charge on 28/7/2020 before Hon. Ong'udi J. represented by Ms. Munyao
3. The matter proceeded for hearing before Hon. Dulu J. on 3/12/2020. He heard 6 witnesses, I heard PW7 - the Investigating Officer, and then prosecution closed its case.

4. The issue at this juncture is what option is available to the accused under section 306 of the Criminal Procedure Code which says: **Close of case for prosecution**

*(1)When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.*

*(2)When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any)*

*to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.*

*(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.*

5. Defence counsel filed submissions dated 5/4/2025 urging the court to make a finding under section 306(1) of the Criminal Procedure Code and acquit the accused person. Counsel relied on **Bhatt vs R [1957] E.A 332**, to the effect that the prosecution had not established a prima facie case; that there was contradiction in the medical evidence; cited **Ndung'u v R [1985] e KLR** that court omitted the requirements of section 19 of the Oaths and Statutory Act citing **Johnson Muiruri v R [1983] KLR 445**

and that accused was charged on suspicion and relied on  
**Sawe v R [2003] e KLR.**

6. The respondents did not file any submissions.
7. I have carefully considered the evidence on record, the submissions filed on behalf of the accused person. At this time - I am not required to give elaborate reasons for my finding. I am of the considered view that the prosecution has established prima facie to warrant being put on the defence.
8. The accused person will be put on the defence pursuant to Section 306 (2) of the Criminal Procedure Code.
9. Orders Accordingly

**Dated, signed and delivered this 17<sup>TH</sup> DECEMBER 2025**

**Mumbua T. Matheka  
Judge**

Court Assistant - Chrispol

Accused Person present

Ms. Gitonga Counsel for accused

Mr. Kazungu for State

Court: Defence Hearing 5<sup>th</sup> March 2026

Mention on 12<sup>th</sup> January 2026.

