



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. E036 OF 2023**

**REPUBLIC/STATE**

.....**PROSECUTOR**

**VERSUS**

**MUAMBI MUTHINI alias KALALA .....**

**.....ACCUSED**

**RULING**

1. The accused person is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The information states that on 24<sup>th</sup> March 2021 at Kithuani village, Ulaani sub-location, Kathama location in Mwala Sub-County within Machakos County, he murdered **Beatrice Munini Muthini**.
2. The accused pleaded not guilty to the charge and in order to prove its case the prosecution called nine (9) witnesses.
3. Briefly the prosecution's case is that the deceased died at the Kenyatta National Hospital on 24<sup>th</sup> March 2021 due to a head

injury inflicted upon her on 2<sup>nd</sup> March 2021. She is alleged to have been left at home alone with the accused person who is her son. Her husband Muthini Mutuku (PW2) testified that he had gone to a nearby kiosk to buy some sugar; that while at the kiosk he could see his home and the deceased; that he was able to see the deceased go back home and he also saw the accused go to the home; that he heard noises at the home and went there immediately only to find the accused had locked his house and left and the deceased lying on the ground. She had been hit on the back of the neck with a jembe. He made arrangements to take her to hospital. She later succumbed to the injuries. PW2 also testified that the accused had threatened to kill his mother for disapproving his attendance at a certain church. He stated that they had reported the threat to the area Assistant Chief, but no action was taken. None of the other prosecution witnesses directly witnessed the crime as they all went to the scene after the event.

4. After the close of the Prosecution's case this court is required (see section 306 (1) of the Criminal procedure Code) to upon hearing arguments from the state and the defence, determine whether or not there is evidence that the accused committed the offence. Should the court find there is no evidence then it must acquit the accused person (see section 306 (1) Criminal Procedure Code). However, should it find there is evidence it is enjoined to put the accused on his defence (see section 306 (2)

*Criminal Procedure Code*). The legal burden of proof lies upon the prosecution and the standard of proof is beyond reasonable doubt.

5. Whereas Counsel for the parties - Ms Nyauncho for the State and Mr. Nabende for the accused - had consented to making their arguments through written submissions only those of Mr. Nabende were received. Learned Counsel urged this court to find that the prosecution has not established a prima facie case against the accused sufficiently to warrant him to be put on his defence. He urged the court to acquit him.
6. The ingredients of the offence of murder are the death of the deceased, that the death was by an unlawful act, the identification of the accused as the perpetrator of that unlawful act and the presence of malice aforethought.
7. I have carefully considered the evidence adduced by the prosecution, the submissions of learned Counsel for the accused person, the cases cited and the law.
8. My finding is that the first element, the death of the deceased has been proved beyond reasonable doubt. The deceased's husband (PW2), her brother -in-law (PW1) and step sister (PW3) all attested to her death a fact which was also corroborated by the Pathologist (PW8) and a Doctor (PW7) who was part of the team that attended to the deceased during her hospitalization at the Kenyatta National Hospital.

9. On whether the death was by an unlawful act, there is evidence beyond reasonable doubt that the deceased was assaulted. She was found by her husband (PW2) lying on the ground in their homestead. She had an injury behind her neck and this was corroborated by PW3 and PW6 who were among those who assisted her husband (PW2) to take her to hospital. PW7 - Doctor at Kenyatta National Hospital and the Pathologist (PW8) also corroborated the fact of the injury at the back of her neck. Both concluded that her death was linked to that injury. There is therefore no doubt at all that the death of the deceased was by the unlawful act.

10. As to whether that person was the accused person, it is instructive that this offence occurred in broad daylight and at the homestead of the deceased where the accused who is her son also lived. PW2 testified that the deceased had just returned home from bringing her phone which she had taken to be charged. He also stated that he saw and heard the accused quarrelling with his mother. There was nobody else in the homestead save for the two of them and the accused had previously threatened to kill his mother. Being that it was in broad daylight and Pw2 knew the accused well, this was evidence of recognition and this therefore places the accused at the scene of the offence. This court therefore comes to the conclusion that the accused person has a case to answer and is

required to enter his defence under **Section 306(2) of the Criminal Procedure Code.**

It is so ordered.

**Ruling signed, dated and delivered virtually on this 19<sup>th</sup> day of March, 2026.**

**E. N. Maina**  
**Judge**

**In the presence of:**

Mr. Motende for the State

Mr. Nabende for accused

The accused

Mary - Court Assistant/Interpreter