

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KAKAMEGA**  
**CRIMINAL CASE NO. E001 OF 2021**  
**REPUBLIC.....**  
**.....PROSECUTION**  
**VERSUS**  
**PATRICK WECHULI MUSI alias MONE.....**  
**.....ACCUSED**

**RULING**

1. The accused, Patrick Wechuli Musi alias Mone, is charged with the offence of murder contrary to Sections 203 and 204 of the Penal Code. It is alleged that on 6th October 2020, at Butieri A Village, Lusumu Sub-location, Bunyala West Location, Navakholo Sub-County, Kakamega County, he unlawfully caused the death of John Mwabini Muchivia.
2. The prosecution alleges that the deceased was called from his home at night to assist in withdrawing a child from the accused's house. While responding to this request, the deceased was assaulted with a wooden stick and sustained severe injuries that led to his death.
3. According to the prosecution, on the night in question, the deceased was called from his home to assist in withdrawing a child from the accused's house. While responding to this request, the deceased was attacked and sustained severe injuries that ultimately led to his death.
4. All prosecution witnesses consistently provided evidence linking the accused to the incident. Edward Wechuli (Pw1) testified that his daughter returned frightened after hearing noises about 600 meters away, prompting him to go to the scene where he found the deceased

lying on the ground, groaning in pain, with Everline Omwinda, Caren Maria, and Richard Musi present.

5. He was informed that the deceased had been requested by Everline to assist as nyumba kumi in withdrawing her child from the accused's house, and he observed a wooden stick used in the assault and a pair of black shoes identified as belonging to the accused.
6. Pw3 & Pw4 corroborated hearing screams and finding the deceased injured near the road, stating that he had been attacked after responding to Everline's request for assistance. Richard Musi (Pw5) confirmed that he received contemporaneous information identifying the accused as one of the assailants, assisted in transporting the deceased to Navakholo Sub-County Hospital, and reported the matter to the police.
7. Dr. Dixon Muchana (Pw2) conducted the post-mortem and confirmed that the cause of death was severe head injury secondary to blunt force trauma. Taken together, the eyewitness and medical evidence shows that the deceased was assaulted at night, sustained fatal injuries, and that the accused is connected to the incident through both direct testimony and circumstantial evidence.
8. The court applies established law on a case to answer. **In Bhatt v R (1957) EA 332**, it was held that a prima facie case exists if the evidence, unchallenged, could reasonably lead a tribunal to convict.

9. In **Ramanlal Trambaklal Bhatt v R**, the court stated that the prosecution must present credible evidence establishing the essential elements of the offence, exceeding mere suspicion.
10. Circumstantial evidence is sufficient if it forms a coherent narrative linking the accused to the offence, as held in **Republic v Kipkering Arap Koske & Another**.
11. The court in *Sawe v Republic* clarified that while suspicion alone cannot support conviction, evidence is sufficient at this stage if it requires the accused to provide an explanation.

### **Issues for Determination**

12. The court must determine whether the prosecution has presented sufficient evidence to establish:
- a. The fact of death;
  - b. The cause of death;
  - c. That the death resulted from an unlawful act; and
  - d. That the accused, Patrick Wechuli Musi, is linked to the unlawful act.

### **Analysis and determination.**

13. The fact and cause of death are clearly established by eyewitness and medical evidence. The deceased died from injuries consistent with a violent assault.

14. The unlawful act is demonstrated by the circumstances and injuries inflicted with a wooden stick. There is a prima facie link to the accused:
- I. Pw1 identified black shoes at the scene as belonging to the accused;
  - II. Multiple witnesses confirmed contemporaneous reports identifying the accused as a participant in the assault;
  - III. The sequence of events deceased called out at night, assaulted shortly thereafter, and identified by witnesses as being attacked by the accused forms a coherent narrative.

## **Conclusion**

15. The prosecution has presented sufficient evidence to require the accused to offer an explanation. Therefore, there is a prima facie case against Patrick Wechuli Musi, and he is called upon to give his defence.
16. Pursuant to Section 306(2) of the Criminal Procedure Code: The accused, Patrick Wechuli Musi alias Mone, has a case to answer and is placed on his defence.
17. Defence hearing 11.5.2026.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18<sup>th</sup> DAY OF MARCH, 2026.**

**S.N.MBUNGI**

**JUDGE**

**In the Presence of:-**

CA: Zilda/Velma

Mr. Osango for the Accused person.  
Ms Chala for ODPP present.