

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**HCCR 5 OF 2017**

**REPUBLIC .....**

**....PROSECUTION**

**VERUS**

**FELIX MUTUNGA KASOA.....**

**ACCUSED**

**RULING**

1. The accused person was charged with the offence of murder contrary to Section 203 as read together with Section 204 of the Penal code. The particulars are that on 18<sup>th</sup> January 2017 at Kangúngu village, in Mwala Sub County within Machakos County jointly with others not before court murdered John Mwake Maithya.
2. The accused pleaded not guilty. The matter proceeded to hearing during which the prosecution called 15 witnesses and closed its case.
3. The accused file submissions dated 17<sup>th</sup> March 2026 addressing the issue of whether he has a case to answer. At the time of writing this Ruling, the prosecution's submissions were not on record.

4. In his submissions, the accused outlined the background of the case and identified three issues for determination namely; whether the prosecution has established the essential ingredients of the offence of murder against the accused person; whether the evidence on record links the accused person to the death of the deceased and whether, applying the legal test for a prima facie case, the accused person has a case to answer.
5. On the first issue, it was submitted that the prosecution failed to establish that it was the accused who committed the unlawful act leading to the death of the deceased. Counsel argued that no factual or evidentiary nexus was demonstrated between the accused and the fatal injuries sustained by the deceased. On the second issue, Counsel analysed the witnesses' testimony and submitted that the prosecution failed to establish any credible link between the accused person and the death of the deceased. Taken cumulatively, the prosecution's evidence was said to amount to mere suspicion and conjecture rather than proof capable of connecting the accused to the unlawful act that caused the death of the deceased. The defence therefore urged the court to find that the evidentiary threshold required to connect the accused person to the offence was not met.
6. On the third issue, whether the accused has a case to answer reference was made to the authorities of **Ramanial**

**Bhat v Republic (1957)EA 332; Anthony Njue Njeru v Republic (2006) eKLR.** Counsel submitted that no case had been established against the accused person and that even if the accused elected to remain completely silent, the evidence presented would still be incapable of securing a conviction.

7. In conclusion, the defence urged the court to find that the prosecution failed to establish a prima facie case against the accused person sufficient to warrant placing him on his defence.
8. Having considered the totality of the evidence of the 15 prosecution witnesses and the exhibits produced in the court, I find that a prima facie case has been established against the accused person.
9. At this juncture I will reserve my reasons for the finding. I am guided by the decision in **Festo Wandera Mukando versus Republic 1980 (KLR) 103** and **Republic versus Kevin Owuor Abith alias Opundo (2022) eKLR** which cautioned that; it is inadvisable for the trial court to give reasons as to why an accused person is placed on his defence.
10. I therefore will remain cautious not to make any definitive findings at this stage by declining to provide reasons, even as I conclude that the accused has a case to answer. Accordingly, the accused person is placed on his defence

11. The matter will be mentioned on 18<sup>th</sup> May 2026 for directions under Section 306(2) of the CPC.

Dated, signed and delivered at Machakos this 9<sup>th</sup> day of April, 2026.

**RHODA RUTTO**  
**JUDGE**

**In the presence;**

.....Accused

.....ODPP

Selina Court Assistant