



**Kieti & another v Republic (Criminal Case E018 of 2021)  
[2025] KEHC 9670 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9670 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL CASE E018 OF 2021  
TM MATHEKA, J  
JUNE 20, 2025**

**BETWEEN**

**JOSEPH KIOKO KIETI ..... 1<sup>ST</sup> ACCUSED**

**TITUS KITHUNGU KIETI ..... 2<sup>ND</sup> ACCUSED**

**AND**

**REPUBLIC ..... PROSECUTION**

**JUDGMENT**

1. The two accused persons Titus Kithungu Kieti and Joseph Kioko Kieti are jointly charged with murder contrary to section 203 as read with 204 of the [Penal Code](#).
2. It was alleged that on 8/6/2021 at Ndolo Village Nzeveni Location, Mbooni West Subcounty within Makueni County jointly murdered Rebecca Syombua Munguti.
3. The accused took plea on 15/11/2021, and pleaded not guilty.
4. The prosecution called 8 witnesses; each of the accused person gave sworn statement and did not call any witness.
5. The deceased Rebecca Syombua was the grandmother of PW1 – the 2 accused persons are brothers, and their father was the brother to the husband of Syombua - hence they were her nephews by dint of her marriage to their uncle.
6. Syombua was living in the same homestead with PW1, her mother and her siblings.
7. On the material date according to PW1, Syombua arrived home together with Kioko – the 2<sup>nd</sup> accused. Both of them sat on the bench outside. They were talking, she did not know about what. Kioko received a phone call – he then left Syombua entered her house. Shortly thereafter he came back with Titus the 1<sup>st</sup> accused – and she saw them standing outside Syombua’s house.



8. Titus asked her where Syombua was and she told him that she was in her house then called out and Syombua came out of the house.
9. The Kioko told her that he had brought Titus, so that Titus could give him a share of the proceeds of sale of the land Titus had sold. PW1 was aware that Titus had sold a piece of land to one Wambua, and there was a case on the issue.
10. The response by Titus was that – he told Syombua to tell Kioko that ‘a drunk person is not told such a story’. Syombua told them to sit on the bench. PW1 then went inside the house- shortly thereafter she heard a thud as though something had fallen. She thought it was Kioko who had fallen down - she came out to see only to find Titus hitting Syombua her grandmother on the head with a hammer-twice. She demanded to know why he was doing that but he ran away. Kioko was just standing there she began to scream. Syombua was lying there with blood oozing from her head.
11. Her uncle Francis Munguti arranged for Syombua to be taken to hospital. She testified further that the land in issue had been sold by her grandfather, that Syombua was a witness.
12. On cross-examination she said that Kioko appeared drunk while Titus was sober, that Kioko did not hit her grandmother Syombua. She said her mother was milking the cows at that time but would see what was going on from where she was.
13. PW2 Mary Nduku Kyalo was daughter in law of Syombua, and mother to PW1. On the material date she was in the bathroom when she heard Syombua and Kioko coming home and even saw them through the bathroom door. She came out and saw the 2 seated on a bench outside the house. She went in to change, came out and Kioko told her to make tea for him. Kioko is her brother in law – his father and the father of her husband are brothers.
14. She took a jug and went to milk the cows– Kioko received a phone call and told Syombua he was going to the shops – he left, Syombua entered her house. Before she finished the milking, Kioko came back with Titus, and they asked for Syombua. She told them she was inside the house. She finished milking, Syombua came out, told them to sit on the bench and tell her what had brought them. It was then that Titus hit Syombua on the head with a hammer. She fell, Titus walked away. She and her daughter raised alarm, people came and Syombua was taken to hospital while unconscious. She told the court that Titus was unhappy because of a plot of land that had been sold by Syombua’s husband to one Mutiso – Titus claim was that, that plot of land belonged to his family and they had sold it to one Erastus Musau.
15. PW2 testified that on the material day Syombua, Titus and the said Erastus Musau had come from Kikima Police Station over the said land dispute and Syombua had gone to “give evidence” on how the plot of land was sold by her late husband.
16. PW1 and PW2 told the court that Titus and Syombua had not been talking terms from a long time. PW2 said that this land dispute had been there for a long time.
17. PW3 Francis Mutunga Munguti told the court how on 7/6/2021 – 6pm he heard screams coming from the home of his mother where she lived with his brothers’ wife and children.
18. He rushed there on the way he met Titus the 1<sup>st</sup> accused walking very fast – he stated that Titus told him that it was Kioko who had brought trouble.
19. On arrival he found his mother lying on the ground bleeding, the brother’s wife told him that Titus had hit her with a hammer. Both Titus and Kioko were his cousins. Neighbours came and his mother was taken to Mbooni Hospital where she died while undergoing treatment.



20. He testified that there was a land dispute and on the material date Titus, his mother had been summoned to DCI – that he and his elder brother had accompanied their mother. Titus had sold part of their father’s land. The complainant was the buyer who felt that he had been conned as he had brought building materials only to be told not to construct and to remove his materials from the scene. On cross examination he confirmed he did not see Titus hit his grandmother.
21. PW4 Samuel Makumbi Mutiso testified that he was retired Snr. Assistant Chief Mbooni, Nzeveni Location. He testified that on 9/6/2021 he was summoned by DCI regarding Plot No.2806/Mbooni Mavindu that there was a complaint by Titus. This land had already been sold by one John Munguti Nzau in 1987 – to him – and he got title in 2014. He had sold it to AIC church in 2001 before he got title deed. At DCI Titus was claiming that the plot of land belonged to his family – yet the family of the seller (Syombua and sons) confirmed that the land had been sold to him – PW4.
22. PW5 Erastus Wambua is the one who was claiming that Titus had sold him land. A dispute arose because the family of Syombua said the land belonged to them, yet Titus claimed the land belonged to his father – Syombua’s family said her husband had sold the land to PW4. That he had paid Kshs. 100,000 for the plot whose measurements were 20x100. That DCI had said that the land did not belong to Titus and told him to go and remove his building materials from there. The next day he heard that Syombua had been killed.
23. On cross-examination he said that he had a written agreement with Titus and that when he bought the land, he did not know its number.
24. PW6 Patrick Kisambo Muange told the court that he was Senior Chief Kitise Location. On 21/6/2021 he was informed by residents of Kanyaa Village about a stranger living behind Sandona Bar. He conducted his inquiries and on 23/6/2021 he met the visitor who told him that he was Titus Kithungo Kieti form Matithini Location Nzeven Mumbuni and that his chief was Sammy. He testified that he was not aware of a location by the name Matithini in Mumbuni – and he rang several colleagues – and confirmed that such a location did not exist. Finally, he got a chief form Nzeven, who told him that Titus had killed a person when. PW6 asked Titus, who said he had pushed his grandmother but was not aware that she was dead. PW6 took him to the nearest police post where he was rearrested and taken to Mbooni.
25. PW7 No. 240509 IP Mohammed Abdullahi was based at DCI Mbooni Subcounty. He recalled that on 8/6/2021 at 9.00am, he received report of death of Rebecca Syombua Munguti aged 84 years. The report was that she had been beaten on 7/6/2021.
26. In his investigations- Titus Kithungo Kieti and Kioko Kieti – both brothers visited her – then Titus assaulted her with a hammer. He found that the 2 accused had been to DCI Mbooni on the same day over a dispute over Mbooni/Mavindu/2806 where Titus had sold the land to one person, yet the land had been sold by husband of Syombua to a different person – and her evidence settled the issue – this annoyed Titus who attacked the old lady.
27. Both Titus and Kioko disappeared thereafter Titus was found in Kitise on 23/6/2021 Kioko was arrested on 30/6/2021.
28. On cross-examination he said that the weapon was not recovered.
29. He said that both accused had common intention to kill Syombua – that Kioko covered for Titus so he could kill the lady- that he did not intervene when the 1<sup>st</sup> accused attacked the Syombua.



30. PW8 was Dr. James Mbiu who produced the post-mortem on the body of Rebecca Syombua on behalf of Dr. Innocent Kayola. He testified that;The deceased was 84 years old.Had a cut wound on the left frontal region about 8cm, suturedDepressed skull fracture mid frontal parietal regionInternally there was comminuted fracture mid frontal parietal region, and depressed comminuted fracture right temporal region.There was intra cerebral bleeding  
  
Cause of death – cardio respiratory to cerebral hypoxia due to massive intracerebral bleeding following blunt trauma.
31. On cross-examination he said that injury could have been caused by blunt force from an object with sharp edge, patient could have been pushed hard and fallen from height onto a surface that was not smooth.
32. Upon the close of the case for prosecution the accused persons were put on the defence.
33. Titus – the first accused denied the whole thing. He told court that on 8/6/2021 he was just on his own errands and did not commit the alleged offence. That he was arrested from Kitise where he had gone on 21/6/2021 for business. That the witnesses were all from the same family and had lied to court. That the deceased was the wife of his uncle and they did not have any issues. That the 1<sup>st</sup> witness was son of his cousin and they had a boundary dispute that was settled, and a grudge set in. That the rest were family members who came to testify on issue of land. On cross-exam he denied selling land to Erastus Wambua. He insisted that the PW1, PW2 all lied.
34. Accused 2 – Joseph Kioko Kieti denied any wrong doing on his part, or even being at home on 7/6/2021. He testified that, that was the day he left Kibwezi for home- He said Syombua was wife of his uncle. He said he heard about her death on radio. That the witnesses lied. He said the witness lied because there was a land dispute and a grudge.
35. The accused persons did not call any witness and did not file any submissions.
36. The issue for determination is whether the prosecution has proved the charges against the accused persons beyond a reasonable doubt as required by law.
37. The ingredients for murder are settled – a death of a person, and its cause, caused by a person through unlawful means, with malice aforethought.
38. In this case death was established – Syombua died and the post-mortem report clearly shows that cause of death was not by a natural cause.
39. The post-mortem clearly states that she had depressed fracture, and communitied fracture of the skull. The injuries are consistent with the descriptions given by PW1 and PW2 that the deceased was hit on the head with a hammer by the 1<sup>st</sup> accused person, twice on the head – the result of the blunt trauma was the skull fractures leading to intra cerebral bleeding.
40. Who caused these injuries? The evidence on record clearly points at the 1<sup>st</sup> accused person who did so in the presence of the 2<sup>nd</sup> accused person. Both accused person denied being present on the material day at the home of the deceased. However, the evidence before court is that the incident happened in the day time – and the Titus, Syombua and 2 others had been to the Police Station that day to resolve a land dispute where what Syombua told the police settled the issue.
41. I found the accused person statements of defence incredible – unbelievable in light of the clear evidence by PW1, PW2, PW3, PW4, PW5 and 6. The 2 accused persons were present at the home of the deceased



- on the material day, and the 1<sup>st</sup> accused person attacked the deceased. He was seen by PW1 & PW2 and after that he ran away – to Kitise from where he was arrested.
42. It emerged from the evidence that it is the 1<sup>st</sup> accused who had sold the parcel of land belonging to the family of Syombua to a different person who complained to police. The 1<sup>st</sup> accused was angered by the position taken by the deceased and went to her home to confront her.
43. I have carefully considered the evidence on record on the participation of the 2<sup>nd</sup> accused. Though he denies having been present – the evidence places him at the scene with the 1<sup>st</sup> accused person. Though he is the one who went and came back with Titus, and stood there when the first accused hit the deceased – upon review of the entire evidence and the defence of the 1<sup>st</sup> accused I do not find that had planned with first Accused to kill Syombua. I did not see any evidence of common intent. It appears that he had just accompanied the first accused to hear from Syombua what she had to say about the land dispute. He did not hit the deceased or threaten her to do any such thing but only stood there as his brother assaulted her. While his defence is not credible – that he was not present at the scene – I find that the totality of the evidence does not point to him as having participated in the killing – he witnessed the same.
44. Ultimately it is the first accused person who inflicted the blows that led to the death of Syombua and although the hammer was not recovered – because he left with it –that fact is corroborated by the post-mortem evidence.
45. By hitting the elderly lady on the head with the hammer, the first Accused intended to cause grievous harm – and by so doing – brought himself within the purview of Section 206 of the *Penal Code* and I find that he had malice aforethought.
46. In the circumstances I find that he is guilty as charged and convict him accordingly of murder c/s 203 as read with s. 204 of the *Penal Code*.
47. For the second accused he gets the benefit of doubt and is acquitted accordingly. He is to be set at liberty unless otherwise legally held.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF JUNE 2025**

**MUMBUA T MATHEKA**

**JUDGE**

CA Chrispol

Accused persons present

Mr. Kazungu for State

