



**Republic v Muthiani (Criminal Case E007 of 2019)
[2025] KEHC 8757 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8757 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE E007 OF 2019
AN ONGERI & AN ONGERI, JJ
JUNE 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHRISTOPHER MUSYOKA MUTHIANI ACCUSED

JUDGMENT

1. The Accused Person in this case Christopher Musyoka Muthiani alias Kimondolo was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code Cap. 63 Laws of Kenya.
2. The particulars of the charge were that on or about the 11th June 2019 at Mlkloriti village within Taita Taveta County, the Accused person murdered Julius Muthiani Musyoka.
3. The Accused Person pleaded not guilty to the charge.
4. He was represented by Mr. Mosioma Advocate during the trial. The prosecution called a total of nine (9) witnesses.
5. The prosecution evidence in summary was that PW1 Samwel Mulwa Musyoka who lives at Malkloriti and works as a stone breaker was called by a fundi called Ndunda on 14th June 2019 at about 9a.m.
6. Ndunda told PW1 that there was a body at his farm. PW1 went and saw the body. He identified the body as that of Julius Musyoka who was his elder brother.
7. PW1 telephoned the Chief and the police and the body was taken away by police.
8. PW1 said there was a mattress, a blanket ,a wheelbarrow and some clothings at the scene.
9. PW1 said the Accused Person was subsequently arrested and charged with murder.



10. In cross-examination, PW1 said that the body of the deceased was recovered on the piece of land allocated to PW1.
11. He said the property had been left to them by their parents. He said the Accused Person and the deceased used to take care of their mother's cattle in turns.
12. PW2 Martha Malai said she is the one who found the body on 14th June 2019 and she called PW1 and alerted him.
13. PW3 PC Alex Shisanya investigated the case. He said he recovered the body of the deceased from the scene.
14. PW3 said he found a mattress, a blanket and a cap at the scene but he did not know to whom they belonged.
15. PW3 said that the Accused Person confessed that he hit the deceased on the head with a stone as a result of a land dispute.
16. PW4 DR. Charity Kimathi conducted a post mortem on the body of the deceased. She said the cause of death was severe head injuries caused by a sharp heavy object.
17. PW5 Gibson Nyerere Godson a relative of both the deceased and the Accused Person said that the Accused Person confessed to him that he had killed the deceased over a land dispute.
18. PW5 said the Accused led him to the scene where he saw the body and also a mattress and a blanket.
19. PW5 said he also saw a wheelbarrow and a jembe which had blood stains.
20. PW6 PC Munyi said he took over investigations from PW3. He said he sent photos which were in the file to Chief Inspector Kyalo.
21. PW7 Chief Inspector Peter Kyalo produced the photographs which had already been processed.
22. PW8 William Mumo who is a cousin to both the deceased and the Accused Person said he was called to the police station at Taveta on 20th June 2019 where the Accused Person confessed that he had killed the deceased. In cross-examination PW8 said the family of the deceased had land disputes.
23. PW9 Chief Inspector Pius Chemwolo recorded the confession from the Accused Person on 20th June 2019. He said the Accused Person was arrested on 15th June 2019 by a mob and taken to the police station.
24. PW9 produced the statement as an exhibit in this case. The statement read as follows;

“I am the above mentioned Kamba male adult aged 41 years. I come from Makloritiri “B” village and I work in a quarry within the said village. I am not married and thus have no family (children).

I recall very well on the 11th June 2019 at around 9:00p.m I was in my house when my brother the late Julius Muthiani Musyoka came in and beat me with a panga, slaps and kicks accusing me that I had no right to live in our family homestead since I am not married.

Sensing that the beatings were getting out of hand and was overpowering me, I rushed outside, took a huge stone and hit him hard. Thereafter I hit him with a jembe. I later on retreated to my house and slept. At around 0500hours the following morning I went to check on him in his house only to find out that he was dead.



I immediately transported his body in a wheelbarrow to a ditch about 200metres from our homestead where I buried him in a shallow grave in order to pre-empt any suspicion. I thereafter went back and continued with my chores. On the 14th day of June 2019 my neighbours came to my home and claimed that they suspected that I was involved in the murder of Julius Muthiani Musyoka (my brother) but I denied. On the 15th day of June 2019 they accompanied me to Taveta Police Station where I surrendered myself to police having confessed to have murdered my brother. That is all I wish to state.”

25. This court took over the hearing of this case from this stage and after complying with Section 200 of the Criminal Procedure Code, the accused Person opted to proceed from where the previous court had reached.
26. The court made a ruling that the Accused Person had a case to answer after going through the evidence on record.
27. The Accused Person gave sworn evidence. He said he used to stay far from his brothers.
28. The Accused Person said he never confessed that he killed the deceased. He denied that he had a land dispute with the deceased.
29. The Accused Person said the items found at the scene do not belong to him.
30. The Accused Person said the last time he saw the deceased was on 8th May 2019 at their mother’s house.
31. The Accused Person said both his parents had died and they used to look after their mother’s cattle in turns.
32. He said there was no one staying in their parent’s home.
33. He said the deceased and PW1 were neighbours. He said his brothers wanted to take his land and that is why they had him arrested.
34. The Accused Person said he was forced to put his finger print on the statement. He said he went to school upto Class 3.
35. In cross-examination, the Accused Person said that PW1 is his brother together with Musau and the deceased.
36. The Accused Person denied that he had any land dispute with his brothers.
37. The parties filed written submissions as follows:-
38. The prosecution’s submissions argued that the accused is guilty of murder under Section 203 of the Penal Code for killing Julius Muthiani Musyoka on June 11, 2019, in Malukiloriti village.
39. That the prosecution presented nine witnesses, while the defense called none. The burden of proof rests entirely on the prosecution, requiring proof beyond reasonable doubt, as established in *Republic v Silas Magongo Onzere and Miller v Minister of Pensions*.
40. The prosecution further submitted that the key issue is whether the prosecution has proved the elements of murder: the death of the deceased, the accused’s role in causing it, and malice aforethought.
41. The prosecution said that the death of Julius Musyoka was confirmed through a post-mortem report by PW4, Dr. Charity Kimathi, which attributed the cause of death to severe head injuries from a sharp, blunt, or heavy object.



42. Further, that there were photographs (P.ex.4a-h) and testimonies from PW1 (Samuel Mulwa Musyoka), PW3 (PC Alex Shisaya), and PW5 (Gibson Nyerere) that corroborated the death.
43. The prosecution said that they also established the accused's guilt through his own confession (P.ex.8), recorded by PW9 (CI Chemwolo) and witnessed by PW8 (William Mumo).
44. That the confession detailed how the accused killed the deceased after a dispute over family land, striking him with a stone and a jembe before burying the body in a shallow grave.
45. The prosecution asserted that the confession was voluntary and admissible under the Evidence (Out of Court Confessions) Rules, 2009.
46. On malice aforethought, the prosecu
47. tion argued that the accused's use of excessive force—despite the deceased initiating the altercation—demonstrates intent to cause grievous harm or death under Section 206 of the Penal Code.
48. That the defence of provocation is dismissed as an afterthought, citing *Peter King'ori Mwangi & 2 others v Republic* and *Republic v Fredrick Mmbala Musoti*, which emphasize that provocation requires a sudden loss of self-control, not premeditated retaliation.
49. The prosecution also references *Karanja v Republic* to argue that the accused's failure to raise provocation earlier undermines its credibility.
50. In conclusion, the prosecution urged the court to find the accused guilty of murder, having met the burden of proof beyond reasonable doubt.
51. The defence counsel submitted that the accused was charged with the offence of murder under Section 203 as read with Section 204 of the Penal Code of Kenya, with the prosecution alleging that on or about June 11, 2019, he murdered Julius Muthiani Musyoka.
52. That the accused pleaded not guilty, and the prosecution called nine witnesses to establish the elements of the offense beyond a reasonable doubt.
53. However, the defence submitted that the case against the accused is fraught with inconsistencies, procedural irregularities, and a lack of direct evidence linking him to the crime.
54. That the prosecution's case hinges heavily on circumstantial evidence and an alleged confession by the accused.
55. Notably, that there were no eyewitnesses to the crime and that the prosecution failed to conclusively prove malice aforethought, as none of the witnesses testified to any prior intent by the accused to harm the deceased.
56. Instead, that the evidence suggests that the accused was a victim of familial discrimination, particularly due to his lack of a family, which allegedly disqualified him from inheritance.
57. The defence submitted that the prosecution also did not establish a clear motive for the accused to commit the crime, while other family members, including the deceased's brother (PW1) and wife, stood to benefit from his death.
58. Further, that critical gaps exist in the prosecution's evidence. The alleged murder weapon (a hoe) and the wheelbarrow reportedly used to transport the body were never subjected to forensic analysis to confirm the presence of the deceased's blood.



59. That the prosecution also failed to explain why these items were not tested, raising doubts about their evidentiary value.
60. Additionally, that the timeline of events is inconsistent: the prosecution claims the deceased was killed on June 11, yet PW1 testified to seeing him alive on June 12, undermining the credibility of the alleged confession.
61. Further, that the confession itself is highly questionable. That the accused alleged that it was obtained under duress, coercion, and intimidation, and the circumstances surrounding its recording violate constitutional safeguards.
62. That the confession was recorded six days after the accused's arrest, during which time he was held in custody without explanation for the delay.
63. That the recording officer failed to fully adhere to the Confession Rules, 2009, including ensuring the accused's voluntary participation and informing him of his rights.
64. That PW8, the witness present during the confession, confirmed that the accused was not given an opportunity to voluntarily sign the statement, casting further doubt on its admissibility.
65. Further, that photographic evidence presented by the prosecution lacked proper authentication, as the prosecution did not provide details on when, how, or by whom the photos were taken.
66. That the absence of timestamps and the failure to produce the maker of the photos further weaken their reliability. Moreover, the prosecution did not investigate other potential suspects, such as those linked to the blanket and mattress found near the scene, nor did it explore alternative motives arising from the family's land disputes.
67. Given these deficiencies, the defence submitted that the prosecution did not meet the required standard of proof beyond a reasonable doubt.
68. That the evidence is marred by contradictions, procedural lapses, and a reliance on an unreliable confession.
69. That the accused's constitutional rights were violated, and the case against him rests on speculation rather than concrete proof.
70. In light of these submissions, it is respectfully urged that the court acquit the accused, as the prosecution has failed to discharge its burden of proof.
71. The principle that it is better for ten guilty persons to escape than for one innocent person to suffer underscores the necessity of upholding the accused's right to a fair trial and the presumption of innocence.
72. The evidence, when considered in its entirety, does not sustain a conviction, and the accused should be granted the benefit of the doubt.
73. I have carefully considered the evidence adduced by the prosecution in this case.
74. It is the duty of the prosecution to prove the guilty of the Accused Person to the required standard in criminal cases which is beyond reasonable doubt.
75. The issues for determination in this case are as follows:-
 - i. Death of the victim.



- ii. Whether the death was lawful.
 - iii. Whether the Accused caused the death by omission or commission.
 - iv. Whether the Accused had malice aforethought.
 - v. Whether the Accused has a valid defence.
76. The prosecution is relying on the confession which the Accused made to PW9.
 77. On the issue of death of the victim, I find that the post-mortem report by PW4, Dr. Charity Kimathi, confirmed the death resulted from severe head injuries caused by a sharp or heavy object, aligning with the accused's confession (P.ex.8) that he struck the deceased with a stone and a jembe.
 78. The confession, recorded by PW9 (Chief Inspector Chemwolo) and witnessed by PW8 (William Mumo), was admissible under the Evidence (Out of Court Confessions) Rules, 2009, despite the accused's belated claim of coercion.
 79. The court finds no merit in this allegation, as the confession was detailed, voluntary, and corroborated by PW5's testimony that the accused led him to the scene and admitted the killing.
 80. Malice aforethought under Section 206 of the Penal Code is established by the accused's use of excessive force—striking the deceased multiple times after a dispute—and his subsequent concealment of the body, demonstrating intent to cause grievous harm or death.
 81. The defence of provocation fails, as the accused's retaliation was not immediate or proportionate, and the altercation did not meet the legal threshold under Section 207–208 of the Penal Code.
 82. The court notes the accused's actions were premeditated and brutal, exacerbated by familial betrayal, warranting the severest penalty under the revised sentencing framework.
 83. The prosecution's reliance on circumstantial evidence, including the blood-stained jembe and wheelbarrow, further solidifies the chain of causation under Section 213 of the Penal Code, despite the defence's objections to forensic gaps.
 84. In line with *Republic v Silas Magongo Onzere* and *Miller v Minister of Pensions*, the prosecution discharged its burden of proof.
 85. The accused's denial of land disputes and his allegation of familial conspiracy are unconvincing, given the consistent testimonies of PW1, PW5, and PW8.
 86. The court dismisses the defence's argument that the confession was coerced, as no evidence substantiated this claim, and given that the recording officer complied with procedural safeguards.
 87. Based on the evidence presented, the court finds that the accused, Christopher Musyoka Muthiani alias Kimondolo, is guilty of the murder of Julius Muthiani Musyoka.
 88. The prosecution has proved beyond reasonable doubt that the accused unlawfully caused the death of the deceased with malice aforethought.
 89. Consequently, the court convicts the accused of murder under Section 203 of the Penal Code.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF JUNE, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI



JUDGE

In the presence of:-

Court Assistant: Millicent

