

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRC E004 OF 2024

REPUBLIC.....

PROSECUTOR

VERSUS

MUTETI MUTUNGA

ACCUSED

JUDGMENT

1. The accused **MUTETI MUTUNGA** was charged with murder contrary to section 203 as read with section 204 Procedure Code. That on the 21st February 2014 at KIOU sublocation, KASIKEU Location , MUKAA subcounty , MAKUENI County he murdered his wife GRACE NDANU .
2. Plea was taken on 13th March 2024 and he pleaded not guilty.
3. PW1 Nthambi Mutunga is the mother to the accused and mother-in-law to the deceased who was the wife to the accused.
4. They were all living together in the same homestead.

5. She testified that on 21st February 2024 she recalled that her son Muteti killed his wife Ndanu. She told the court that that morning she had gone to the shamba with her husband. She was aware that Ndanu had also gone to the shamba.
6. While at the shamba she was called by Muteti's elder sibling that there were screams from Muteti's house and asked her to go and check. She went. The wife of the elder brother of Muteti told her to go inside the house of Muteti. She went and the house was locked, Muteti was beating his wife. She hit the door with a stone and it opened with Muteti coming out holding a jembe which was blood stained. By this time her husband was coming , running. On seeing his father Muteti ran and jumped over the fence. She saw Ndanu lying on the floor with her head facing the bedroom and the legs facing the door. She too ran out calling for help. At the same time calling Muteti's elder brother to go catch Muteti. He chased and caught Muteti and brought him back. A crowd had formed and they tied him to a tree.

7. She saw that Ndanu's head had been hit and broken, there was blood on the floor . She identified the jembe.
8. On cross examination she said that it appeared as if the couple had disagreed that day. She said that earlier when they went to the river with Ndanu she told him that her husband had prayed the whole night while hold a bottle of water he had obtained from the Church of Muema, which he had been told to sprinkle in the home. That for three days he had not eaten as he was fasting. That on the day of the offence he bought her sugar , milk and tea leaves. These were delivered by a child as he did not see the accused that day.
9. PW2 James Mutunga the father of Muteti Mutunga and father-in-law to Ndanu . He testified that on the material morning he went to the shamba while his wife and her daughter in law went to the river. They came back and him wife joined him.
10. While at the shamba they heard screams at home. His wife went to check and he heard her screaming that Muteti had killed his wife.

11. PW2 went home and the accused was caught by people and brought back home . He saw the wife of Muteti lying dead with her head cracked open with the brains out. He said she had been hit at the back of the head. He identified the jembe that had killed her.
12. PW3 Muange Mutunga was also in the shamba with his wife. He saw Ndanu the wife of Muteti leaving another shamba from across the other side. 20 minutes later he heard a lot of noise from home. He told his wife to check and she told him that the noise was from Muteti's house. His wife called out to her mother-in-law to go check. When his mother went to check she screamed calling him . He saw Muteti jumping over the fence and he ran towards home. He jumped over the fence caught him and brought him back. He found the blood stained jembe outside there. A crowd came and the Serikali was called . When Serikali came they entered the house . She had been hit on the back of the head and had collapsed at the entrance to her bedroom. The body was taken to the mortuary while Muteti was taken to the police. He identified the jembe,

13. On cross examination he told the court that before this incident he had not seen the accused for four days . About the deceased and the accused, he said their relationship was sometimes not peaceful. He confirmed that there was a church by name kwa Muema in his home area.
14. PW4 Mutuku Wambua the father of Ndanu . he said he learnt of his daughter's death and went to his in-laws' home where she had been married for 5 years. He saw her body lying on the floor with injuries on the head. There was a crowd. The CID came and took her body away , took Muteti away. He was not aware of any issues between them but he said his wife told him that there was a time Ndanu had gone home to report some disagreements.
15. PW5 Kasyoki Kithome testified that he assisted the brother of Muteti to catch him. He said they took him home . He saw the jembe which he identified in court.
16. Pw6Julius Kyalo Mutungwa brother to the accused learnt about the incident from a phone call. He came ,home and found that Ndanu was 'killed'. He attended the post mortem at Sultan Hamud Hospital

17. PW7 no 99859 PC Douglas Mboroki forensics crime scene investigator . He received an exhibit memo from no 99750 PC Jacob Nyamita ref CR 432/37/2024 accompanied by a CD with a request to supervise the printing of photos and preparation of a report. He printed 5 photos which he produced together with the exhibit memo, and the report(certificate) and the CD as PEx 3(a) to 3(e), 3, 4 and 6 respectively. The photos were of the deceased lying on the floor with a visible head injury with a jembe beside her, and after the body had been moved. He did not visit the scene.
18. PW8 Dr Evelyn Kitungo conducted the post mortem examination on the body of the decease at Sultan Hamud Hospital on the 29th January 2024.
19. Externally the body had bluish lips and fingertips due to lack of oxygen, bruises right face, forehead and chin , deep cut wound on the occipital region associated with fracture of the skull and closed fracture of the right radial ulna. Internally on the head was a 14cm long cut wound , fracture of skull, subdural hematoma, broken C1 vertebra .

20. Cause of death severe head injury secundar to sharp force trauma following physical assault. She produced the post-mortem report as Pex 2.
21. PW9 no 99750 PC Jacob Nyamita was stationed at DCI Mukaa on general investigations . upon receipt of the report at the DCI office he was assigned the investigation duties and proceeded to the scene with colleagues at KIUWANI village in the home of Muteti Mutunga. Upon arrival he noticed that the door was locked from outside, there were some pigeon peas and a big stone at the door . When the door was opened for them, he saw the body of Grace Ndanu lying on the floor with a visible injury of the back of the head, the right hand was broken. In the sitting room Muteti Mutunga was seated on a bed and was tied up with the ropes used to tether cows. There was a jembe which they were told had been used to kill the deceased.
22. He reiterated the testimony of the witnesses adding that the accused's mother recorded a statement that his wife had told her that had been fasting for 4 days . That on the night before the incident he ate and said that he wanted to make a sacrifice. They were from the river and

she told Ndanu that they hurry up as there was a child sleeping at home. He reiterated that accused's mother on responding to screams found the door locked from inside, hit it with a stone, it opened, she saw Ndanu on the floor and her son came out with the blood stained jembe which he threw near the door and began to run.

23. After the post-mortem, he had the accused charged with this offence. He produced the jembe as exhibit Pex 1.

24. On cross examination he said he was not aware of any mental health issues on the part of the accused. That the mother told him that the accused had been fasting and talking to water.

25. The prosecution closed its case and the accused was put on his defence. When the charge was read to him afresh, he told the court on oath that it was not like that . He denied the charge. He denied causing the death of Grace Ndanu.

26. He testified that on 21st February 2024 he woke up at 6:00am and Ndanu his wife left him with the baby saying she was going to the shamba. She came back after about an hour and began to make tea while he was inside the

house, he heard the sound NDU! And she screamed. He said he found her fallen on the floor in the corridor and there was a jembe nearby . He said he came out quietly to check whether there was anyone. He saw no one. He went round his house and called his brother PW3 Muange Mutunga and began to tell him what had happened. He raised alarm people came and tied him up

27. He said his mother and father lied. That the only truth was that he was inside the house sleeping. He denied any connection between his church, prayers and the death of his wife.

28. On cross examination by the prosecutor, he told the court that on the day Ndanu was found dead they were just the three of them in the house, he, Ndanu and the baby who he said was 6 years old. He said the house was not locked; he said his mother lied when she said she opened the door with a stone . Asked whether his wife fell, he said he heard NDU! Then found her lying in the corridor bleeding. That she did not tell him what had happened . He denied coming out with the jembe but confirmed that the jembe belonged to him, that he had bought it for work

and that it was blood stained. He said he found it next to her . He denied running saying that he was found outside , behind his house. He denied that his brother chased him.

29. He said his brother Muange and him had a dispute over land as he Muange had been told (he did not say by who) to move elsewhere and leave the accused on the part of the land. That his mother had a grudge because she did not love his children .

30. He said confirmed that he and his wife had issues but that they had resolved the same.

31. Upon the close of the defence counsel for the accused submitted that they would rely on the defence.

32. The issue for determination is whether the prosecution has proved beyond a reasonable doubt that the accused person caused the death of his wife, that the killing was unlawful and that he had malice aforethought.

33. The ingredients for murder are set out at s. 203 and 2016 of the Penal Code . s, 203 states;

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

34. S. 206 defines malice aforethought

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(a)an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b)knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c)an intent to commit a felony;

(d)an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

35. The prosecution having charged the accused bears the onus to place before the court sufficient evidence to the standard required of beyond a reasonable doubt that the accused committed the stated offence.
36. They have to show that there is death of another person. In this case it is not in doubt that Grace Ndanu is dead. The testimonies of her mother in law, her father in law, her father, the accused and the evidence of the pathologist are proof that there was death.
37. That this death was caused and was unlawful is also not in doubt. The cause of death was severe head injury following assault with a sharp object on the head. It caused a fracture of the skull. her C1 cervical vertebra was broken. This is proof that the death was caused, and clearly , unlawfully.
38. Who is the person who caused the death? The prosecution say it is the accused. The accused has denied the same through his sworn statement of defence pointing the finger on unknown assailant(s).
39. The accused was at home with his wife when the incident happened. Screams were heard coming from that

house and none other than his own mother witnessed the crime first hand.

40. According to her the accused was beating his wife inside the locked house. She forced the door and the accused ran out of the house with the jembe and that she is the one who called out to her other son to chase after him after he jumped over the fence. He testified to seeing his brother jumping over the fence running, and a neighbour testified to assisting to catch the accused.

41. Hence there is direct evidence of him emerging from the house where his wife lay dead and attempting to flee the scene.

42. His defence is that he heard the sound NDU! While inside the house and came out to find her lying there. However, the postmortem report shows that Ndanu did not have just one injury. She had a closed fracture of the right forearm, she had multiple bruises on the right maxilla region 6cm in length, forehead 4cm, chin 2cm. These appear not to be consistent with one strike on the back of the head but other assault prior to the fatal blow. That explains the screams that were heard by other family

members who were in the shamba just about 20m away. The accused's statement of defence begins to fall apart at this point.

43. The alleged grudges between him and his mother and brother appear to be afterthoughts because they were never put to the witnesses. When I heard these witnesses, they simply told the court what they saw and the record will show that there little or no cross examination on their part. The defence is not persuasive that there were grudges.

44. On the alleged unknown assailant, this is not supported by any evidence, and again is an afterthought. There was no one else in the house. Upon hearing screams family members within the homestead and in the nearby shamba's attention was focused on the home and no other person was seen leaving the home. In any event the evidence of the accused's mother was never challenged.

45. It my finding that the prosecution has established that it is the accused who caused the death of his wife.

46. Did the accused have malice aforethought? The CoA in [Osoro & 2 others v Republic \[2025\] KECA 544 \(KLR\)](#) had this to say on the issue:

*In **Tubere s/o Ochen v. Republic [1945] 12 EACA 63** the court addressing malice aforethought stated: **“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one-off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm, and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”***

*Similarly, in **Omar v Republic, [2010] 2 KLR 19**, this Court, (Bosire, Waki & Aganyanya, JJA), at page 29, applied the principle in Section 206 of the [Penal Code](#) as follows: **“So by the appellant hitting the deceased on the neck with a***

bottle, he must have intended to cause at least grievous harm. Indeed, the blow using a bottle caused a fatal wound on the deceased. The evidence clearly shows the appellant had the necessary malice aforethought”.

The fact that the appellants chased the deceased while armed with pangas, and cut the deceased with pangas, causing him severe injury is an indication that they had an intention to cause him grievous harm or death. Malice aforethought can therefore be inferred under Section 206(a) of the Penal Code.

47. The above authorities are on all fours with this case. The accused used a jembe to hit his wife . He broke her hand , injured her face. The force on the head was so hard that part of the spine was broken and the skull fractured. He must have intended to cause grievous harm or death and *malice aforethought can therefore be inferred under Section 206(a) of the Penal Code.*

48. The unhealthy religious angle was dangled before the court by the I.O. However, the I.O did not investigate it further. There was no investigation of the so called Church of Muema, the alleged 'water' given to him by the church, and alleged relationship between his prayers, fasting and sacrifice, and the killing of his wife. Neither was there any evidence of mental illness on the part of the accused person

49. From the foregoing I find that the prosecution has proved beyond a reasonable doubt that the accused caused the unlawful death of his wife. I find him guilty of murder c/s 203 as read with s. 204 of the Penal Code and convict him accordingly.

**Dated signed and delivered virtually this 8th January
2026.**

Mumbua T Matheka

Judge

CA Chrispol

Accused present at Makueni Main

Timothy Musyoki for the state

Mr. Kioko for the accused.

Mr. Musyoki: We do not have records. We can treat him as a first offender.

Mr. Kioko: We can get a pre-sentence report before mitigation.

Order: PSR be availed on or before 19th January 2026 before the DR. The Report be served upon counsel.

Mitigation on 4th of February 2026

RIC