



REPUBLIC OF KENYA



**Republic v Mwai (Criminal Case 17 of 2015)
[2025] KEHC 3244 (KLR) (6 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 3244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 17 OF 2015
RM MWONGO, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

PATRICK NJIRU MWAI ACCUSED

SENTENCE

1. The accused was charged alongside 2 others with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offence are that on the 12th September, 2015 at an unknown time at Komboini sub-location within Kirinyaga County, they jointly and unlawfully murdered John Musebiu.
2. The prosecution case was that the deceased, a boda boda rider, was at work on 9th September 2015 as usual, when the accused herein alleged that he had stolen Kshs.15,000/= . About 20 fellow boda boda operators, took the deceased to Kangai - Marula and Kiangiciri junction and one of the co-accused (now deceased) begun demanding the allegedly stolen money. Some people begun assaulting the deceased. The co-accused (now deceased) allegedly used an electric wire to whip the deceased, who succumbed to injuries when taken to Embu Level 5 Hospital.
3. After a full hearing, the accused was convicted of the offence and was offered a chance to present his mitigation.
4. In mitigation, the accused stated that he is a 56-year-old man with a wife and children and that he takes care of his aged parents. He stated that he cares of his sister's 3 children and they all suffer from cerebral palsy. He is an SDA elder of the church and that even when he was out on bond, he lived peaceably with his community. He urged the court to consider that the offence occurred within a mob and he was alleged to have stolen money. That the Probation Officer's Report stated that the community and



family are ready to take him back while the victim's family did not give any negative report. He prayed for a non-custodial sentence.

5. According to the Probation Officer's report dated 11th December 2024, the accused is a part of a group of vigilantes who help with keeping the neighbourhood secure. Members of the community said that they did not have a problem if the accused rejoins their neighbourhood since he has strong Christian values. They believe that he will be more beneficial to the community on a non-custodial sentence. That the crime occurred within a group where emotions ran high. The accused has a grandchild and 3 nieces and nephews of special needs who depend on him. The accused is apologetic of the offence even though he feels like he was a victim of circumstances.

6. The punishment for a person convicted of the offence of murder is prescribed under Section 204 of the *Penal Code* which provides:

“ Any person convicted of murder shall be sentenced to death.”

7. The court in this matter is guided by the provisions of the Judiciary Sentencing Policy Guidelines 2023 as amended on the direction of the Supreme Court in the case of *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated))* [2017] KESC 2 (KLR). Paragraph 2.2.6 of these guidelines provides:

“ Following *Muruatetu II*, the mandatory nature of the death penalty is still applicable to other capital offences, except murder.”

8. The court has considered the circumstances of the case and how the deceased met his death. It was an occurrence that happened within a mob and the accused was charged with the offence alongside 2 others. The probation officer's report is favourable and through it, the community and families of both the accused and the deceased have expressed themselves. The prescribed death penalty is therefore excessive in this case.

9. The Judiciary Sentencing Policy Guidelines 2023 provides the objectives of sentencing which are:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a lawabiding person.
4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
5. Community Protection: to protect the community by incapacitating the offender.
6. Denunciation: To communicate the community's condemnation of the criminal conduct.



10. In the result, the rights of the victim’s family should be balanced against the rights of the accused person to a sentence that is lenient. This was echoed in the case of Republic v Mwangi [2024] KEHC 367 (KLR) (Sentence) where it was held that:

“The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentenced proposed by the State is appropriate and within the range of sentences meted out in similar cases.”

11. The court will therefore exercise its discretion in sentencing, which discretion must be exercised judiciously as was observed in the Nigerian case of African Continents Bank v. Nuamani [1991] NWLI (parti86)486, where it was stated:

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

12. In the premises, a custodial sentence is in my view appropriate. The accused is hereby sentenced to serve 5 years imprisonment. In this regard, the time already spent by the accused in remand custody shall be taken into account as per section 333(2) of the [Criminal Procedure Code](#).

13. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 6TH DAY OF FEBRUARY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. Mwangi K holding brief for Ngigi for Accused
2. Accused present in Kerugoya Prison
3. Mamba for the State
4. Francis Munyao - Court Assistant

