



REPUBLIC OF KENYA



KENYA LAW
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**Republic v M'mbo (Criminal Case 26 of 2010)
[2025] KEHC 4427 (KLR) (8 April 2025) (Resentence)**

Neutral citation: [2025] KEHC 4427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA**

CRIMINAL CASE 26 OF 2010

AC BETT, J

APRIL 8, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

SILAS M'MBO ACCUSED

RESENTENCE

1. On the February 21, 2015, the Accused was convicted of the offence of murder and sentenced to death.
2. The Accused was aggrieved by the death sentence and lodged an appeal which was heard and determined in his favour.
3. On 16th October 2023, the Court of Appeal allowed the Accused's appeal against the death sentence, set aside the sentence and remitted the matter to this court for re-sentencing.
4. When the matter came up for re-sentencing, the State urged the court to call for a sentence review report from the Probation Office. The Probation report was filed after which the Accused, who had filed written submissions asked the court for a date for ruling.
5. In his submissions, the Accused states that he has undergone rehabilitation programmes while in prison and was now a reformed person. Notably, he says that he has undergone counselling and has repented and sought forgiveness from God. According to him, he has served a significant portion of the sentence and in the process, acquired skills in tailoring and agriculture that would not only make him self-reliant but also help him contribute to nation building.
6. As an auxiliary to his submissions, the Accused filed a letter of recommendation from the Officer-in-Charge, Kibos Maximum Security Prison detailing the courses and skills that the Accused has acquired while in prison. From the letter, it is evident that the Accused has undergone spiritual trainings



severally. He has also attained a Grade III certificate in Tailoring and is stated to be a reliable tailor in the prison industry.

7. The Officer-In-Charge of the prison commends the Accused for good behavior and leadership skills. He is said to be disciplined, passionate about his tailoring work, and an active member of the Prison's church who spends his free time ministering the gospel to his fellow inmates.
8. The Accused prays for a rehabilitative approach in the re-sentencing.
9. The State did not file any submissions.
10. The sentence review report confirms that the Accused has done extensive training while in prison. It notes that the Accused is remorseful for his actions and acknowledges the gravity of the offence that he committed.
11. The social inquiry done for purposes of the sentence review report established that the Accused's home is fraught with tension due to deep-seated inheritance disputes after the Accused father's demise. The inheritance was exacerbated by the move by three of the Accused's step-brothers to take possession of the family land.
12. The report further points out that the prolonged incarceration of the Accused has resulted in a strained relationship between the Accused and his wife and son who are reluctant to have him back home, perhaps as a result of the latent tension that is fueled by the inheritance dispute.
13. According to the report, re-integration of the Accused into the society may prove difficult given the current division in the family. Since the Accused's victim was his father, the ambivalent community stand, and the cultural norms that render him at risk of homelessness. The report suggests a cautious approach to the Accused person's release.
14. Turning to the circumstances under which the offence was committed, the deceased killed his father. He was seen assaulting the deceased with a stick because he was not happy that his deceased father had allowed the Accused's sister's son whom he perceived to be a stranger, to be circumcised in their homestead.
15. In killing his father over a minor disagreement, the Accused acted in a most heinous manner that deserves to be denounced. A custodial sentence is most appropriate in this case.
16. I have taken into account the guiding principles of sentencing as laid down in the [Judiciary Sentencing Policy Guidelines \(2023\)](#). I have also taken into account the Muruatetu re-sentencing Guidelines.
17. In the case of [Francis Karioko Muruatetu & Another v. Republic & Katiba Institute & 5 others \(Amicus Curiae\)](#) [2021] eKLR, the Supreme Court issued the following guidelines:-

“9. To obviate further delay and to avoid confusion, the court issued the following guidelines: -

1. The decision of Muruatetu and the guidelines herein were applicable to sentences of murder under sections 203 and 204 of the [Penal Code](#) only.
2. The Judiciary Sentencing Policy Guidelines were to be revised in tandem with the new jurisprudence enunciated in Muruatetu.



3. All offenders who had been subject to the mandatory death penalty and desired to be heard on sentence were entitled to a re-sentencing hearing.
4. Where an appeal was pending before the Court of Appeal, the High Court would entertain an application for re-sentencing upon being satisfied that the appeal had been withdrawn.
5. In the re-sentencing hearing, the court had to record the prosecution's and the appellant's submissions under section 329 of the *Criminal Procedure Code*, as well as those of the victims before deciding on a suitable sentence.
6. An application for re-sentencing arising from a trial before the High Court could only be entertained by the High Court, which had jurisdiction to do so and not the subordinate court.
7. In a sentence re-hearing for the charge of murder, both aggravating and mitigating factors such as the following, would guide the court: -
 - i. Age of the offender;
 - ii. Being a first offender;
 - iii. Whether the offender pleaded guilty;
 - iv. Character and record of the offender;
 - v. Commission of the offence in response to gender-based violence;
 - vi. The manner in which the offence was committed on the victim;
 - vii. The physical and psychological effect of the offence on the victim's family;
 - viii. Remorsefulness of the offender;
 - ix. The possibility of reform and social re-adaptation of the offender; and,
 - x. Any other factor that the court considered relevant.
8. Where the appellant had lodged an appeal against the sentence alone, the appellate court would proceed to receive submissions on re-sentencing.
9. The guidelines would be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They would also apply to sentences imposed under section 204 of the *Penal Code* before the decision in *Muruatetu*."

18. This court is obliged to take into account both the aggravating and the mitigating factors as it considers the suitable sentence to be imposed.



19. I have perused the records of the trial court. When the Accused person was called upon to present his mitigation, his advocate said that they had nothing to say in mitigation. The only conclusion I can draw from the record is that the Accused was not remorseful even after having caused his father's death. However, it appears that after imprisonment, the Accused further reflected on the consequences of his actions and therefore took responsibility for the same and has expressed remorse.
20. I have taken into account the submissions by the Accused and the pre-sentence report, as well as the principles of re-sentencing set out in the Muruatetu case. I have also considered the circumstances of the case and the fact that the deceased succumbed to a ruptured spleen that appears to have been caused by one blow as the post mortem revealed no other injuries. It is my considered view that the Accused deserves a deterrent sentence geared towards rehabilitation.
21. I therefore sentence the Accused to seventeen (17) years imprisonment. The said sentence shall run from the date the trial began which is August 13, 2010.
22. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 8TH DAY OF APRIL 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution

Accused person in person

Court Assistant: Polycap

