



**Republic v Gathirimu (Criminal Case 22 of 2018)  
[2025] KEHC 7336 (KLR) (21 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 7336 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CRIMINAL CASE 22 OF 2018**

**CW MEOLI, J  
MAY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ROBIN MWAURA GATHIRIMU ..... ACCUSED**

**SENTENCE**

1. Robin Mwaura Gathirimu (hereafter the Accused) was charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya. He pleaded not guilty but after a full trial he was found guilty on the lesser charge of Manslaughter contrary to section 202(1) as read with section 205 of the *Penal Code*. The record shows that the Accused was aged 17 years at the time of the offence, and plea. He was aged 23 years at the time of conviction.
2. Pursuant to orders by this court (Mutuku J), pre-sentence report and supplementary reports were filed on 11<sup>th</sup> June 2024 and 2<sup>nd</sup> April 2025, respectively. No previous records were furnished by the State, while the presentence report and mitigation by the defence indicated that the Accused did not have a previous conviction.
3. The defence mitigation highlighted the young age of the Accused, his remorse, suffering from long incarceration, and the death of his mother in that period. The defence counsel indicating these as pointers to the Accused having learned a lesson, sought a non-custodial sentence.
4. On their part, the State emphasised the age of the deceased at death, the grief suffered by her family and reiterating the fact that the pre-sentence report did not recommend a non-custodial, urged that a custodial sentence was appropriate. In the ruling delivered on 22.07.2024 the court called for a report to guide on an appropriate sentence. Hence the subsequent supplementary report recommending a three-year probation sentence, preceded by a year in a male probation hostel. By the time the supplementary report was filed, Mutuku J had been transferred and the task of sentencing fell on me as her successor.



5. Undoubtedly, at the time of the offence and commencement of the case, the Accused was a child, turning eighteen in December 2019 and aged 23 at conviction. He is no longer a child; having been born on 30<sup>th</sup> April 2001 according to the birth certificate on the record, he is presently about 24 years old.
6. I have considered that no previous conviction was proved against the Accused. Equally, I have carefully considered the detailed pre-sentence and supplementary reports. Unfortunately, apart from the brief reference to the sentiments of the victim family in the said reports, no victim impact statement was tendered. That said, the victim family expressed their grief, loss and trauma. The mother of the victim called for justice.
7. Sentencing is a vital part in the administration of justice. Thus, clause 4.6.1 of the Sentencing Guidelines [2023] provides inter alia that the sentencing process is an integral part of the trial and is therefore subject to the fair hearing constitutional guarantees. The Supreme Court of India in the case of, Antony Pareira v State of Maharashtra (2 AIR 2012 SC 3802) held that that :

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done”

18. These views were reiterated by the Supreme Court of Kenya in Francis Karioko Muruatetu & another v Republic [2017] eKLR where it was held that although the death sentence provided for the offence of murder in the *Penal Code* remained lawful, the mandatory nature of the sentence was unconstitutional as it tended to take away the discretion of the court in sentencing. While directing that re-sentence hearings be conducted for affected convicts and prisoners, the Supreme Court listed several mitigating factors applicable in a sentencing re-hearing involving accused persons convicted on a murder charge as follows;

- a. Age of the offender;
- b. Being a first offender;
- c. Whether the offender pleaded guilty;
- d. Character and record of the offender;
- e. Commission of the offence in response to gender-based violence;
- f. Remorsefulness of the offender;
- g. The possibility of reform and social re-adaptation of the offender;
- h. Any other factor that the Court considers relevant.

8. Mindful of the discretionary nature of sentencing, the Supreme Court was also quick to add the caveat that:

(72) We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process”.



9. Clause 1.3 of the Sentencing Guidelines [2023], identifies the objectives of sentencing as: -
- a. Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to deter future crime. Victims and society might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system
  - b. Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences. Thus, it is divided into two components: individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence. Other people are deterred from committing those offences by the punishment meted out to those who commit them.
  - c. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.
  - d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Any harm done to the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position. The goal of restoration is to make up for any harm the perpetrator has caused the victim.
  - e. Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the expense of the criminal investigation and punishment.
  - f. Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
  - g. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
  - h. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - i. Reintegration: To facilitate the re-entry of the offender into the society.
  - j. Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence, or it may entail a sentence of life in jail without the chance of release.”



10. These guidelines apply to all criminal offences, including the offence now under consideration. In the court's sentence ruling delivered on 22 July 2024 and which prompted the filing of the supplementary report, the Court (Mutuku J) grappled with the question whether the Accused who was a minor, one year shy of the age of majority at the time of the offence, should be treated as a child for purposes of sentencing.

11. In that regard, this court will take guidance from the decision of the Court of Appeal in *JKK v Republic* [2013] eKLR where the court dealt with a similar dilemma as follows:

“The dilemma we face in this appeal was the ascertainment of the age of the appellant. Going by the remarks by the Judge, he was about 17 years when he was first arraigned in court in March 2009, it is now four years later, which means he is now over the age of 18 years, therefore, he is not suitable to be subjected to any of the sentences provided for under the *Children Act*. The purposes of the sentences provided for under the *Children Act* are meant to correct and rehabilitate a young offender, i.e. any person below the age of 18 years while taking into account the overarching objective is the preservation of the life of the child and his best interest. A death sentence or life imprisonment are not provided for but when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner. The offence committed by the appellant is very serious, an innocent life was lost, the appellant though probably a minor when he committed the offence must serve a custodial sentence so that he can be brought to bear the weight and responsibility of his omission or lack of judgment, by serving a custodial sentence. We are of the view that the appellant who is now of the age of majority cannot be released to the society before he is helped to understand the consequences of his 15 mistakes, which can only happen after serving a custodial sentence”

12. Similarly the same Court in *DKC v Republic* [2014] eKLR stated that: -

“Whatever the case, life imprisonment is not provided for under the *Children Act*, but when dealing with an offender who has attained the age of 16 years, the court can sentence him in any other lawful manner. We think that due to the gravity of the offence, and the current age of the appellant, he cannot be released to the society without being brought to terms with the consequences of his action or omissions by a custodial sentence. It is for this reason that we are inclined to allow the appeal against the life sentence imposed by the trial court and substitute it with imprisonment for a period of 10 years from the date of conviction. We therefore allow the appeal to the extent that the life sentence imposed on the appellant is substituted with ten years imprisonment.”

13. In a more recent decision, namely, *Kiti v Republic* [2023] KECA 1403 (KLR) the Court of Appeal stated regarding section 239(1) of the Children's Act that: -

“Whereas the above provision appears to offer a remedy to the child offender, the twist weaves its way in, when at the time the trial is concluded, like in this instance, the child has transitioned into a young adult and cannot benefit from the sentencing options available. We are persuaded that this was the situation the trial court encountered, when it opted to fall back on section 25 (2) of the *Penal Code*. And now that the provision has been declared unconstitutional, what screams out for an answer is whether the court is so helpless as to stand aside and say "too bad, you were a child, now you are an adult, no penalty fits your category, go home and sin no more!"



Far be it that such a situation would prevail; indeed if the objective of the Constitutional provisions and even the *Children Act* is to prevent children who are in conflict with the law from being subjected to long imprisonments and detention in harsh conditions as was well captured by the court in *J.K.K v R 17* [2013] eKLR, then that purpose must be preserved in instances where the need for correction and rehabilitation of a young offender remains, even as the Court takes into account the over-arching objective which is preservation of the life of the child and his best interest.

It is desirable that a message be sounded out that children who commit serious crimes, and transit into adulthood at time of conviction, cannot walk home scot-free; and whereas, it is indeed in their best interest that they must not be treated like adults; yet in the absence of a penalty commensurate with the objectives in meting out a sentence, then the measure of last resort contemplated in Article 53 (2) of *the Constitution* must become applicable."

14. This means that while a sentence of death or life imprisonment cannot be meted against a convict, an adult at the time of sentence, but who was a minor at the time of the offence, if such a child committed a serious offence, he ought to be made to bear the consequences of his conduct. In this case, the Accused committed a serious offence of manslaughter, executed in the most gruesome manner. Having lured his six-year-old victim away from her playmates, he took her to his house where using a panga, he severed her neck muscles all round, decapitating her head, amputated her right foot, inflicted incisive wounds around the left ankle. Her anus was found to be dilated; however, the cause of the dilation wasn't apparently investigated even though the swab taken revealed blood stains, according to the government analyst's report. Most probably, she had been sodomised. The victim's death was certified by the pathologist as arising from exsanguination due to multiple injuries caused by sharp trauma.
15. By the time entry was gained by the searching party into his house, the Accused had fled, having stashed the minor victim's body into a gunny bag and stored it under the bed, possibly awaiting an opportunity to dispose of it. All this speaks to the egregious cruelty, brutality and callousness of the Accused, who according to the pre-sentence report has had a history of violence against girls, including his own sister, even as a young child.
16. The picture emerging from the pre-sentence report is one of a child manifesting consistent waywardness and indiscipline, abuse of drugs from an early age leading to frequent expulsion from schools and transfers. He was out of control as a child and the parents seem to have been unable or unwilling to take any remedial steps. In his defence, the Accused claimed to have been so intoxicated on drugs, muguka and alcohol on the material date that he didn't know what he was doing. The aggravating factors in this case stack up against a lenient sentence, or a non-custodial sentence for that matter. A deterrent sentence appears more deserved here.
17. The court would be abdicating its duty if it were to release the Accused back to the society without him being brought bear the consequences of his action or omissions, and hopefully rehabilitation, through a custodial sentence. Society, and particularly women's lives would otherwise be at risk if the Accused was to be placed on a non-custodial sentence in his current state. The prevailing high incidence of violence against women and femicide in the country militate against such a sentence.
18. The Court of Appeal in *MMM v Republic* [2022] KECA 1055 KLR sentenced an adult appellant, who was aged 16 years when he defiled and murdered a minor, to 25 years imprisonment. Considering all the foregoing, the Court is of the firm view that the Accused deserves a substantial prison sentence. I hereby sentence him to 29 (twenty-nine) years imprisonment. The Accused has been in custody since his arrest on 1<sup>st</sup> December 2018. Pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*, the sentence will be reckoned from the said date of arrest.



**DELIVERED AND SIGNED IN OPEN COURT AT KAJIADO ON THIS 21<sup>ST</sup> DAY OF MAY 2025.**

**C. MEOLI**

**JUDGE**

In the presence of:

Accused: Present

For the Accused: Ms. Mageto h/b for Mr. Nairi

For the State: Mr. Kilunda

C/A: Lepatei

