



**Musau v Republic (Criminal Case 01 of 2017)
[2025] KEHC 9684 (KLR) (19 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 9684 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 01 OF 2017**

TM MATHEKA, J

JUNE 19, 2025

BETWEEN

THOMASS SAVALI MUSAU ACCUSED

AND

REPUBLIC PROSECUTION

SENTENCE

1. Thomas Savali Musau was charged with murder contrary to section 203 as read with 204 of [Penal Code](#).
2. At the end of the trial the accused was found guilty of the murder of Dorcas Mwendu Musembi.
3. I ordered for a pre-sentence report from Probation and After Case Services. It was filed on 30/4/2025. I have carefully considered the report, which also carries the victim impact statement.
4. The deceased was a 21-year-old woman who was sexually assaulted then murdered. Though evidence at the scene pointed to the accused person, he continued to deny the offence and expressed no remorse for the same. The community is reported to be hostile to him, though his family is positive towards him.
5. The section 204 provides penalty for the offence of murder – to be death. It states 204. Punishment of murder Any person convicted of murder shall be sentenced to death.
6. The mandatory nature of the sentence of death in murder cases was dealt with by the Supreme Court in Muratetu 1 – hence sentence in every murder is to be determined in accordance with its specific facts.
7. In this case a young woman was raped, then killed. Her family remain traumatized to date. Her death adds to the number of women killed through SGBV
8. The Sentencing Policy Guidelines 2023 at para 5. 2.2 states that murder causes harm that is immeasurable at para 5.2.4 the Guidelines provide a guides as to the assessment of both aggravating and mitigating factors.



9. It states at 5.2.3 In addition to the generic features contained in the GATS, (The Guided Approach to Sentencing (GATS)) features particularly relevant to murder may include but are not limited to:

5.2.4 Aggravating Factors in Murder Cases: i. ii. iii. A significant degree of planning or premeditation. The mental or physical suffering inflicted upon the victim before death. Factors such as the type of weapon used, torture or inhuman or degrading treatment prior to death will be relevant. The use of duress or threats to enable the offence to take place. The vulnerability of the victim e.g., due to age or disability. The fact that the victim was providing a public service or performing a public duty. Multiple victims or multiple perpetrators. Where the offence involved an abuse of trust. The relationship between the victim and the accused should be carefully considered. Offence was motivated by, or there was demonstrated hostility to the victim based on his or her race, gender, sex, sexual orientation (or presumed sexual orientation), pregnancy, marital status (so called ‘honour killings’ for example), health status (e.g., murder occurred because of the HIV status of the victim, or albinism), ethnicity, culture, dress, language, birth, or religious orientation (or presumed religious orientation). A history of assaults, threats, or coercion upon the same victim. Absence of self-defence or provocation. The offence involved deliberate drugging or stupefying of the victim. Proven abduction or kidnapping of the victim before the murder was committed. Where a demand for ransom was made, signifying a financial motive. Concealing, destroying, or dismembering the body. Where the murder was conducted in furtherance of a ritualistic practice such as witchcraft.

5.2.5 Mitigating features relating to murder might include: Lack of premeditation. The offender suffered from a mental disorder or mental disability which lowered his degree of blame. In a case of joint enterprise, the role the offender played may be lower than his co-accused. For example, in the resentencing of the Applicants in Francis Karioko Muruatetu & 6 others v Director of Public Prosecution [2019] eKLR the Judge categorised the offenders into four categories based on their culpability. The first category involved the architects of an offence e.g., those who financed the killing, the second category involves offenders who ensnared the deceased into his death, the third category is the henchmen, those who carried out the brutal killing and the fourth category involves offenders involved in the cover up of the offence by attempting to silence witnesses. The Judge sentenced the third category with the highest term of imprisonment and graduated the term down for the other categories. That the offender was provoked.

That the offender acted to any extent in self-defence or in fear of violence.

The age of the offender.

10. The accused is a 1st offender, he is not remorseful but seeks leniency from This court – the offence was aggravated and included sexual assault on the victim who was a 21-year-old woman.
11. In mitigation on his belief, his counsel Mr. Kioko submitted that the accused was remorseful and regretted the acts leading to the death of the deceased – that he was married with one child, had been in custody for 7 years.
12. Further that he had undergone several trainings, had changed and was now a good citizen. He urged the court to find that the period served in pre-trial custody as sentence served.
13. I have carefully considered the Probation and After Care Services, Pre-Sentence Report, the mitigation by counsel, the aggravating factors, the mitigating factors and find that the accused person deserves a custodial sentence.



14. The accused person is sentenced to 30 years imprisonment to run from 3/2/2017

15. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF JUNE 2025

MUMBUA T MATHEKA

JUDGE

Chrispol Court Assistant

Accused Present

Kioko for Accused

Kazungu for State

