



**Prosecution v Muthee (Criminal Case E003 of 2025)  
[2025] KEHC 9000 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9000 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL CASE E003 OF 2025  
LN MUTENDE, J  
JUNE 23, 2025**

**BETWEEN**

**PROSECUTION ..... REPUBLIC**

**AND**

**JOHN MAINA MUTHEE ..... ACCUSED**

**RULING**

1. This ruling is delivered pursuant to the provisions of Section 200 (2) of the [Criminal Procedure Code](#).
2. The accused, John Maina Muthee was convicted for Murder having offended the provisions of Section 203 as read with Section 204 of the [Penal Code](#). The victim was Samuel Nderitu Wachiuri (Deceased). He was tried as provided by the law. He was placed on his defence where after he tendered evidence in defence and a defence reserved for judgment.
3. On the 16<sup>th</sup> February 2023 when the judgment was to be delivered the accused who was out on bond didn't turn up for trial. In the result the judgment was delivered on his absence and a warrant of arrest issued as he had been found guilty of the offence.
4. The Accused was on the run until 2<sup>nd</sup> April 2025 when he was apprehended and produced in court.
5. A pre-sentence report filed captures the views of the Accused, victims of crime and the community at large. The Accused pleads for leniency. He states that he has learnt a lesson having gone through the trial process and averred to resolve differences in accordance with the law.
6. The 44-year-old primary victim was married with one child hence his death has not only affected them financially but psychologically as well. That the deceased mother became mentally challenged hence could not be able to apprehend what was happening. And the daughter has to endure financial strain in looking after her. They acknowledge that the Accused's family did contribute towards burial expenses but argue that they should have sought reconciliation, hence plead for justice for their kin.



7. The community through the area administrator state that the Accused and deceased were friends but add that the Accused was not a good person. He is feared and has been involved in mugging and theft. That when the offence was committed the community became hostile and were planning to burn down the families houses but the administration intervened.
8. In mitigation learned counsel for the defence Mr. Muriuki submitted that the incident was unfortunate. That the Accused undertakes to live a life of sobriety and has never indulged in alcoholism after the event. That he is young aged 26 years and if incarcerated his productive life will be diminished. He is married with three (3) children.
9. That his family is willing to support him join college to pursue further studies. That upon being released on bond he did not commit offences. That among other things that could mitigate the condition of the deceased's mother would be reconciliation process that the Accused is able and willing to pursue. They prayed for a lenient sentence.
10. The learned prosecution counsel Ms Mumbi relying on the pre-sentence report urged that other than contribution towards the burial expenses there was no attempt by the Accused or his representative to reconcile with the deceased family. That no remorse has been shown by the Accused such that the alleged remorse is an afterthought. She emphasized the issue of the Accused being a thief and mugger in the locality and called upon the court to consider a custodial sentence.
11. The Accused contravened Section 204 of the *Penal Code* which provides for death penalty, a sentence that was found by the supreme court to be unconstitutional. (see *Muruatetu & Another v Republic K 5 others* (Petition 15 and 16 of 2015 (consolidated) (2017) KESC 2(KLR) (14 December 2017) (Judgment)).
12. By virtue of that decision although the death penalty is still imposed in meritorious cases the court has the discretion to consider other sentences available as provided by statute.
13. I have duly considered evidence on record, and mitigating factors. The objective of sentencing include deterrence, incapacitation, retribution, rehabilitation and restoration. An offender and other people should be deterred from committing similar offences and for the offender the question of recidivism should also be inquired into, hence calling for a sentence that is deterrent.
14. If the offender is likely to reoffend he should be removed from the society to deter him from committing other crimes by being incarcerated.
15. Depending on the circumstances that led to commission of the offence restoration justice that involves the victims and the community at large may be considered. This would involve healing of the victims and paying back to the community hence the offender being re-integrated into the society.
16. Whichever way the court reaches a judgment, the punishment should be proportional to the crime committed. In *Omuse v. R* (2009) KLR 214, it was held that:

“...the sentence imposed on an accused must be commensurate to the moral blame-worthiness of the offender and the proper exercise of discretion in sentencing call for “the Court to look at the facts and circumstances of the case in their entirety before setting for any sentence.”
17. The deceased succumbed to multiple stab wounds to the abdomen and thorax bilaterally. These were fatal injuries. In the case of *Republic v Ruth Wanjiku Kamande* [2018] KEHC 5237(KLR) a decision that was upheld by the court of Appeal (see *Ruth Wanjiku Kamande v Republic* [2020] KECA 14



(KLR) the court sentenced the Accused to death for deliberately stabbing the victim to death. The stabs were 25 in number.

18. Whether the Accused herein is actually remorseful for causing the death of the deceased for owing him Kshs 100/- is demonstrated by his conduct after his release on bond. He never attempted to initiate reconciliation with the secondary victims hence he cannot purport to think of it at this point in time.
19. Further, the Accused absconded such that the judgment was delivered in his absence. This was in clear disregard for the justice process. He was defiant. Allowing leniency on the case can be perceived as tolerating disrespect to the court. This is an aggravating factor that obviously calls for a severe penalty.
20. From the foregoing, having taken into consideration circumstances of the offence, I sentence the Accused to serve 25 years imprisonment with effect from 2<sup>nd</sup> April, 2025.
21. It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF JUNE, 2025.**

**L.N. MUTENDE**

**JUDGE**

