



**Republic v Mwago (Criminal Case 13 of 2019)  
[2025] KEHC 10656 (KLR) (23 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 10656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE 13 OF 2019  
GL NZIOKA, J  
JUNE 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMUEL KARIUKI MWAGO ..... ACCUSED**

**SENTENCE**

1. The accused was arraigned before court charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) [Cap 63] Laws of Kenya. The particulars thereof are as per the charge sheet.
2. He pleaded not guilty to the charge. Subsequently, the case proceeded to full hearing, and the court delivered a judgment dated 26<sup>th</sup> February 2025, wherein he was found guilty of the offence and convicted accordingly.
3. The court then called for the accused's records and pre-sentence report. The prosecution presented the accused's records indicating that he is a first offender. In the same vein, a pre-sentence report and victim impact statement report both dated, 19<sup>th</sup> March 2025 were availed.
4. It is noteworthy that the pre-sentence report indicates that the accused father is deceased while his mother is a business person at Karagita village. That he was born in the year 1990 and is the fourth born out of five [5] siblings. Further he married Valery Nangekhe and are blessed with two children.
5. That, he completed his secondary education in the year 2009 and took a course in driving in the year 2010. Further, he has worked in various companies between 2012 upto the time of his arrest in 2017. That after his arrest he spent one [1] year in remand before his mother secured bond. That, due to fear for his security he left Naivasha and relocated to Ol Kalau. That he relocated back to Naivasha in the year 2021 and settled with his uncle at Lakeview. On 10<sup>th</sup> February 2022 he secured employment



- at Bohemian Flower Farm as a general worker and rented a house at Karagita village where he resided with his family until he was rearrested after being convicted of the offence herein.
6. The accused denied committing the offence as stated in the statement of defence. That he is remorseful, and his life has never been the same since the offence occurred. He prays for forgiveness and asks the court to exercise leniency during sentencing.
  7. The accused's mother indicates that, the accused was brought up morally upright and there have never been issues of indiscipline noted, while his sister states that the accused is an industrious person, and both acknowledge that the offence he is charge with is serious and carries a large sentence and were shocked, pained by the court verdict, and are grieving as a family and pray a lenient sentence.
  8. However, the report indicates that the local Administrator and the neighbours at Mirera village stated that, the accused is a security threat to the community. Further, his safety is not guaranteed as most people are bitter over the offence herein and wants him punished by a punitive sentence.
  9. Further, the Investigating officer, Corporal Chai stated that the accused has anger issues aggravated by alcohol use and is a high-risk person in the society. That his safety is not guaranteed and therefore wants the court to mete out the maximum sentence.
  10. On the victim impact, the report reveals that the deceased was thirty [30] years old at the time of his demise. That his brothers are psychologically, emotionally and financially affected by his death. The deceased's brother John Simon Wachira Mwaura states that, the matter is still fresh in his mind and remembers how the deceased's body was severely injured and mutilated beyond recognition. That he hallucinates and dreams about him and suffers from distorted reality complication arising from the trauma that he underwent and has not been addressed. Further, his work performance has been affected, and socially he fears his family members associating with other people.
  11. Further, John Macharia the deceased's other brother, states that he cries daily remembering the scene where his brother, the deceased, was killed and that the past six [6] years have be torturous to the family and brought them a lot of pain and suffering. Furthermore the other brother, David Kimani Mwaura states that he has been devastated undergoing psychological and emotional torture as the deceased offered him support when needed and their life has been hell since his demise.
  12. The deceased brothers stated that, they faced huge financial implications during the burial of the deceased. That, they are yet to heal and are not ready forgive the accused and ask the court to sentence the accused to life imprisonment to bring the matter to closure.
  13. In conclusion, the Probation Officer, Carlos Ziro Pole, notes that the accused has anti-social personality patterns, is uncaring and egocentric with a pro-criminal attitude, blaming others for his crime and does not take full responsibility. That his security is not guaranteed if released back into the community. Furthermore, victim's family is not interested in reconciliation, restitution and/or compensation and require psychological support and frequent counselling to assist them through the healing process. The Probation Officer left the matter to the court to make an informed decision.
  14. However, the accused through oral mitigation submissions by Mr. P. K. Njuguna, learned counsel stated that, he is a first offender, a family man with good relationship with his family members. Furthermore, he has been working, contributing positively to the society, and always been present when required. That the purpose of sentencing is not retribution but rehabilitation and the accused prayed for a non-custodial sentence stating that he will benefit from the leniency of the court.
  15. However, Ms. Chepkonga, the learned State counsel, in response submissions stated that the pre-sentence report is not favourable as the community is not willing to accept the accused back to the



community due to the gravity of the offence. Further, the victim's family is yet to come to terms with the offence and is still traumatized. That, in the circumstances, a non-custodial sentence is not appropriate and prayed for a deterrent sentence.

16. I have considered the records of the accused noting that, he is a first offender and the views in the pre-sentence report alongside submissions by the respective parties.
17. In the same vein, I note that sentencing plays a central role in the administration of justice. In that regard, clause 4.6.1 of the [Sentencing Guidelines \[2023\]](#) provides inter alia that; the sentencing process forms part of the trial and is therefore subject to the fair hearing constitutional guarantees.
18. The Supreme Court of India in the case of, [Antony Pereira V State of Maharashtra](#) [2 AIR 2012 SC 3802] held that stated that

“70. 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”.

19. Similarly, the Supreme Court of Kenya in [Francis Karioko Muruatetu & another v Republic](#) [2017] eKLR stated that: -

“[41] It is evident that the trial process does not stop at convicting the accused. There is no doubt in our minds that sentencing is a crucial component of a trial. It is during sentencing that the court hears submissions that impact on sentencing. This necessarily means that the principle of fair trial must be accorded to the sentencing stage too.

20. In addition, the Supreme Court of Kenya gave guidelines to consider as mitigating factors in re-sentencing offenders convicted of the offence of murder and by extension sentencing in other cases as follows: -

“[71] As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- [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.

[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”.

21. Be that as it may, justification, function and objective of punishment in criminal law, has five major goals: retribution, deterrence, restoration, rehabilitation, and incapacitation.
22. In that recognition of these goals, clause 1.3 of the [Sentencing Guidelines \[2023\]](#), stipulates the objectives of sentencing as follows: -
  - 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.
23. To revert back to the matter herein, the court has taken into account the following factors in pronouncing the sentence herein: -
- a. The circumstances of the case, how the victim run away to save his life in vain, and how the witnesses tried to wade off the suspects to save the victims life in vain.
- b. That the pre-sentence report indicates that the accused denies committing the offence to date, therefore even if he is given a non-custodial sentence will not benefit from it due to his attitude. Furthermore the views of the community are that a punitive sentence be imposed, as the accused has been security threat to the community and most people still bitter, consequently his safety in community is not guaranteed as the environment still hostile.
24. Pursuant to the aforesaid, the accused cannot be released back to the society even for his own safety. However, his mitigation is considered, and the fact that he is a first offender, but the life of a deceased cannot be returned back by whatever sentence the court may give. Murder is not only irreversible but serious offence and calls for a deterrence sentence, therefore the issue of mercy or non-custodial sentence does not arise.
25. Consequently, taking into account the period in custody and/or sentence served, I sentence the accused to serve years twenty-five [25] years imprisonment from the date of this order.
26. Right of appeal 14 days explained
27. It is so ordered.

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

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms Chepkonga for the State

Mr. Njuguna for the accused

The accused present virtually

Ms Hannah court assistant

