



**Republic & another v Korir & another (Criminal Case
14 of 2017) [2025] KEHC 7830 (KLR) (4 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 7830 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 14 OF 2017
RM MWONGO & RM MWONGO, JJ
JUNE 4, 2025**

BETWEEN

REPUBLIC 1ST PROSECUTION

REPUBLIC 2ND PROSECUTION

AND

NICHOLAS CHERUIYOT KOSKEI ALIAS NICHOLAS KORIR ... 1ST ACCUSED

NICHOLAS CHERUIYOT KOSKEI ALIAS NICHOLAS KORIR ... 2ND ACCUSED

SENTENCE

1. The accused person was charged with the offence of Murder contrary to section 203 as read with 204 of the Penal Code. Particulars of the offence are that on the night of 08th July 2017 at Jacaranda Lake Elementaita Lodge in Gilgil subcounty within Nakuru County, the accused murdered his wife Rhoda Mumbi Mutua.
2. The prosecution's rendition of the facts was that the accused set up a trip with his wife to Elementaita Jacaranda Hotel, Naivasha, intending to kill her. That he booked a room specifically with a bathtub, to achieve his murderous intention. After the couple arrived and settled into the hotel, the accused carried out his intention by strangling his wife before carefully putting her in the bathtub.
3. Having completed the job, he then left the room and shut the door, on the pretext that he was going for a jog and to order some food. After being out for a while, he notified the reception that his wife was not answering the phone and that the door to the room was locked. With the help of hotel staff, he returned to the room to find his wife dead.
4. The accused person pleaded not guilty, and the matter proceeded to full hearing. The prosecution called 17 witnesses and the accused defended himself alongside one defence witness. After considering



the evidence and submissions of the parties, the Court found the accused guilty of murder. He was accordingly convicted through a judgment of this court delivered on 04th March 2025.

Mitigation

5. Following the judgment of the court, the matter was scheduled for mitigation and the accused person filed his submissions on mitigation dated 07th April 2025. In his submission, he lamented that he had already been sentenced harshly in the eyes of the public through social media and the press even though the court had not yet pronounced the sentence. He stated that despite the public approbation, he is still a good father to his 2 sons who are now in the care and custody of their maternal aunt and grandfather. Throughout the period of the trial, he said, he tended to the needs of his sons and spent the allowed time with them, never failing as their only surviving parent.
6. He submitted that he has not faced hostility from his neighbors and the larger community throughout the trial whilst he was out on bail. He urged the court to consider granting him a non-custodial sentence so that he can continue taking care of his sons. Referring to the family of the deceased, he stated that they have not expressed preference for a custodial sentence to be imposed on him.
7. The accused acknowledged the various sentences that could be imposed by this court including the death penalty, life imprisonment, a definite custodial imprisonment term and a non-custodial sentence. He relied on the case of *Dennis Gachara Muriuki v Republic* [2025] KEHC 62 (KLR) where Magare, J. discussed the impact of the death penalty and life imprisonment during resentencing. He also relied on the case of *Titus Ngamau Musila Katitu v Republic* [2020] eKLR where the Court of Appeal urged that courts must exercise accountability and transparency during sentencing.
8. The accused informed the court that he lost his mother shortly before he was convicted and the deceased was sadly and conspicuously, missing at the burial. He expressed his remorse over the death of the deceased although he denied involvement in it, a matter that he acknowledged, was already settled through his conviction. He stated that he misses his wife, the deceased, and would like a chance to participate in raising his children. He prayed for leniency, compassion and mercy from the court.

Prosecution's Response to Mitigation

9. In response to the mitigation, the prosecution stated that the court has an obligation to consider all the statements by the victims according to section 216 and 329 of the *Criminal Procedure Code*. In this case, the victims are still healing and are yet to come to terms with the death of the deceased albeit 8 years later. The prosecution characterized the offence herein as not merely murder but also femicide which was currently an issue of national concern. Hence the prosecution urged that the sentence should be commensurate to the seriousness of the offence.
10. It submitted that there were several aggravating factors surrounding the circumstances under which the offence was committed. The deceased, the accused's wife was murdered in cold blood after being lured to the hotel and she had no way of defending herself. It urged the court to remember that the murder was by strangulation and it was well premediated and planned.
11. The prosecution stated that the impact of the offence is great since the children have been left motherless and the accused's community has not offered any reconciliation. It urged the court to consider the provisions of the Judiciary *Sentencing policy Guidelines* 2023, and proposed that the court should impose the death penalty upon the accused.



The Victim's Family's Response to the Mitigation

12. Counsel for the victim's family associated himself with the submissions by the prosecution in response to the mitigation offered by the accused. He pointed out that the death penalty has not been outlawed and it should be applied in this case notwithstanding that reports media had suggested that the accused had been given a life sentence. He submitted that the accused prevented the family of the deceased from attending his mother's burial, and that they had to attend by force, even though they were not allowed to participate in the ceremony.

The Victim Impact Assessment Report (Pre-sentence Report)

13. According to the Pre-sentence Report, the accused maintains his innocence but since he has already been convicted, he pleaded for leniency in sentencing. The victim's family has suffered financial, emotional, physical, social and psychological effects resulting from the case which has taken 8 years in court. The Local Administrator at the accused's home in Trans-Nzoia vouched for him as a supportive member of the community and that he deserves a non-custodial sentence so that he can continue caring for his children.
14. The accused's neighbours at his Nairobi home described him as a calm, respectful, generous and actively involved in community tasks. He is a member of a local church and a children's football club in the estate. The report notes that the accused acknowledges the guilty finding but maintains his innocence. It recommends a punitive and deterrent sentence.

Rejoinder by the victim's family to the Probation Report

15. Counsel for the victims filed a letter received by him from the victim's family dated 28/03/2025. In the letter, the victim's family pointed out that they had not seen the Probation Report as it was first released directly to the Judge and parties had not had a chance to interact with it until the Judge ordered it released to all parties and thereby postponed mitigation. They protested the conduct of the Probation Office in not supplying the report to them until ordered by the Court.
16. The victim's family were dissatisfied with their being characterized as "secondary victims" in the Probation Report. This, they said, devalued the weight of the victim's views and was a misrepresentation as there was no such qualification of "victim" in the law. The victim's family asserted that, contrary to the view presented in the Probation Report, they did not feel "burdened" by the expenses of meeting the deceased's children's basic needs. In fact, they had declared their readiness and willingness to take full legal responsibility over the children who had been in full custody of the victim's family for the entire period of the trial.
17. They asserted their right under Section 20 of the *Victim's Protection Act* and Section 329 C (2) *CPC* to place on record victim impact statements, noting that Section 20 (1) (b) provides:

"A victim has a right to submit any information for consideration to the Court....during .. Sentencing".

Thus, that a Probation Report does not replace or extinguish that right.

18. Accordingly, Jesca Kagwiria Mutua, the deceased's sister who testified as PW7, filed a Victim Impact Statement and she said in essence: That she felt betrayed by a man she had asked the deceased to trust; That she had seen the cruelty and inhumanity of the offender; That he had not exhibited remorse but sought instead to erase the deceased from his life; That he had instructed his children that she was not a part of their lives; and that they should not say they knew her (Jesca); That she feared that the



offender would want to execute revenge on the family members who testified against him, and hence she proposed the maximum sentence permitted by law.

Analysis and Determination

19. The accused was found guilty of murder. The court, through its judgment examined on detail the evidence and found that the offence was premeditated and executed with malice aforethought. At the point of sentencing, the court is bound to consider aggravating factors from the circumstances of the case, the mitigating factors as offered by the accused person following conviction, the victim's family's propositions and any other circumstances that should inform the severity of the sentence imposed. With these factors in mind, a sentencing court has to apply its discretion judiciously. In murder cases, different kinds of sentences may be applied.

a. The Death Penalty

20. Section 204 of the [Penal Code](#) prescribes a sentence of death upon conviction for the offence of murder. It states:

“ Any person convicted of murder shall be sentenced to death.”

21. Noting this, the court considers the sentiments of the Supreme Court in the case of [Muruatetu & another v Republic; Katiba Institute & 5 others \(Amicus Curiae\)](#) [2017] KESC 2 (KLR) (Muratetu 1) where the court frowned upon the fact that the mandatory nature of the sentence prescribed under section 204 of the Penal Code curtails the court's discretion during sentencing.

22. However, the death sentence is still lawful and may be applied where the circumstances fit its application. The Supreme Court held:

“ 48. Section 204 of the [Penal Code](#) deprives the court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under Article 25 of the [Constitution](#); an absolute right.

69. Consequently, we find that section 204 of the [Penal Code](#) is inconsistent with the Constitution and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment.”

b. Life Imprisonment

23. Where a court finds that the circumstances of the case do not warrant imposition of the death sentence, some courts have found it just to impose a sentence of life imprisonment. Through Muruatetu 1, the Supreme Court was not moved to determine the issue of life imprisonment. However, recently, other opportunities have arisen for the apex court to address that sentence in the cases of [Republic v Ayako](#) (Petition E002 of 2024) [2025] KESC 20 (KLR) (Ayako case) and [Republic v Manyeso](#) (Petition E013 of 2024) [2025] KESC 16 (KLR) (Manyeso).



24. In these cases, the Supreme Court was faced with the question of whether or not a sentence of life imprisonment is lawful and constitutionally valid. That court declined to determine the issue since it lacked jurisdiction to interpret the constitution in the first instance that being a preserve of the High Court. However, from these decisions, it remained abundantly clear that the sentence of life imprisonment is a lawful sentence. In the instance of murder, life imprisonment may be applied where the circumstances draw the court away from the mandatory death sentence.

c. Other Sentences that may be imposed

25. There are cases where the court has imposed sentences other than the death sentence and life imprisonment. It largely depended on the circumstances of the case. These other sentences include a definite imprisonment term where an accused person is to be incarcerated for a specific number of years after which he is released, hopefully having reformed. This happens when the death sentence and life imprisonment sentence are too harsh in the circumstances.

26. In other instances, the court may impose a non-custodial sentence for instance a community service order. This order may be given in addition to a custodial definite term sentence or independently as the only sentence imposed upon conviction. The court arrives at these decisions based purely on its discretion informed by the circumstances of the case.

27. Sentencing in Kenya is guided by the Judiciary *Sentencing Policy Guidelines* 2023 which provides the objectives of sentencing as follows:

- “1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community Protection: to protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

28. The prosecution has proposed that the court imposes the death penalty given the circumstances of the case. The court has considered the mitigation offered by the accused person as well as the sentiments of the victim’s family and the Pre-sentence Report. It is evident that the accused is not a danger to the community.

29. He also has 2 children who remain without their mother while their father faces the criminal justice system in this manner. In this case, it is important for the court to consider a sentence that is definitely deterrent, to serve as an example to the community. The court must also endeavour to impose a sentence



that will provide rehabilitation to the offender and possibly offer him a chance to make amends to the victim's family sometime in the future.

30. Moreover, the rights of the victim's family have to be balanced against the rights of the accused person to a lenient sentence. This was echoed in the case of *Republic v Mwangi* [2024] KEHC 367 (KLR) it was held that:

“The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentenced proposed by the State is appropriate and within the range of sentences meted out in similar cases.”

31. The court should therefore exercise its discretion in sentencing, which discretion must be exercised judiciously as was stated in the Nigerian case of *African Continents Bank v Nuamani* [1991] NWLI (parti86)486, where it was observed that:

“The exercise of court's discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

32. The accused's and deceased's children do need their father but he must face consequences for his actions. The court has considered the circumstances of the case and how the deceased met her death, in the hands of her husband of 12 years. The offence was found to be premeditated and planned over a period of time.

33. The accused person attempted to conceal the offence after committing it. In an ideal setting, the death penalty is applicable in a case like this. However, given the fact that the accused person is the only surviving parent to 2 young boys, it is appropriate to impose a definite custodial sentence, which will also serve as a deterrent.

34. Here are some similar decided cases that have helped inform the court's decision:

- a. In the case of *State v Ochung* [2024] KEHC 15758 (KLR), the court sentenced the accused person to life imprisonment for the murder of his lover's child of tender years.
- b. In another case with similar facts as those herein, *Republic v Otieno* [2024] KEHC 15526 (KLR), the court sentenced the accused person to 30 years imprisonment for murdering his wife. The accused in that case had 3 children under his care. The court considered those circumstances before imposing the said sentence.
- c. In *Orara & another v Republic* [2023] KEHC 22713 (KLR), the court sentenced the accused person to 35 years imprisonment for murdering a woman in the presence of her family. The court noted that the murder was premeditated and planned, just like the case herein.
- d. In *R v Kadima alias Erick Kambaye Katalayi alias Enologue Christian Baledi Kadima* [2025] KEHC 4042 (KLR) the Court sentenced the accused to 40 years imprisonment. He was found guilty of murdering his fiancée by asphyxiation due to suffocation, as in the present case.



- e. In *R v Ochieng Stephen Ochieng* KEHC 3887 KLR the 31-year-old accused murdered his girlfriend in what was termed by Authority as a case of femicide. He was sentenced to 25 years imprisonment for stabbing the deceased in the chest and liver.
 - f. In *R v Brian Kabena* [2024] KEHC 7512 (KLR) the 27-year-old accused murdered Everlyne Wanjiru Waweru by stabbing her. Initially, he had pleaded not guilty but later entered into a Plea-Bargaining Agreement. He was convicted for manslaughter and sentenced to 5 years imprisonment and in addition, he was sentenced to 3 years' probation after completing his sentence.
 - g. In *R v Fredrick Odhiambo Owuor* [2024] KEHC 3712 KLR the accused was convicted for the murder of Eunice Aoko through assault due to subdural haematoma. Despite his alibi that he was at work, forensic evidence linked the accused to the murder. He was sentenced to 35 years imprisonment.
 - h. In *R v Obadiab Kariuki Chepkwoy* [2024] KEHC 12444 KLR the accused was charged with the murder of his lover Mercy Chepkoech. After initially pleading not guilty, the accused entered into a plea-bargaining agreement in which he admitted that the two had a "romantic fall out" leading to a fight. In the heat of passion, the accused smothered the deceased. The cause of death was respiratory failure due to manual strangulation. He was sentenced to 10 years' imprisonment.
 - i. Finally in *R v Joseph Kuria Irungu alias Jowie & another* [2024] KEHC 2533 KLR the accused and Jacque Wanjiru Maribe were charged with the murder of Monica Nyawira Kimani. She was found dead with her throat brutally slit and hands tied. The post mortem confirmed death by severe neck injuries causing exsanguination. Jowie was convicted on circumstantial evidence including the "Doctrine of last seen". The 2nd accused was acquitted. The accused was sentenced to death.
35. In the un-replicated detail of the above cases, what is evident are the following patterns: violent attacks on the deceased, manipulative control over their lives, instillation of an environment of fear on the deceased resulting in the deceased persons suffering in silence; frequent physical or emotional abuse of the deceased, and marital or sexual infidelity or allegations of the same. Thus, they undergo serious torture even before being murdered.
36. In the present case, there was evidence of a discordant marriage wherein the deceased disclosed her fears and secrets of alleged infidelity to one Moze.

Conclusions and Disposition

37. I have taken into account all aggravating and mitigating circumstances and all reports availed to the Court. I would point out that with regard to a Probation Officer's Pre-sentence report, what is required in law is set out in Section 5 (5) – (8) of the *Probation of Offenders Act* Cap 64. The provisions are as follows:
- (5) Before making a probation order under subsection (1) or (2), the Court may consider the view of the victim as contained in the presentence report prepared pursuant to subsection (6)
 - (6) Where a subordinate Court or a Superior Court considers making a probation order, it shall, before making such order, direct a probation officer to conduct a social inquiry into the circumstances of the case and the accused and make a pre-sentence report of the findings to the Court.



- (7) A probation officer shall, while acting on the authority of the Court, have the right to access records and any other necessary information from any person or authority having such records or information for the purpose of preparing a social inquiry report.
- (8) A pre-sentence report shall include a recommendation as to the suitable period of supervision, rehabilitation programmes and any measures necessary to reduce the risk of re-offending. [Emphasis added]
38. The Pre-sentence Report availed in this case did not fully comport to section 5 (8) of the *Probation of Offenders Act*. The Probation Officer, instead of making a recommendation, left the matter to Court's discretion, stating:
- “.....based on the nature of the offence the views of the victims and the attitude of the offender, the honourable Court can exercise its discretion and make appropriate orders.”
39. This leaves the Court without the benefit of the social workers' deep learning on psycho-social issues and inputs as to a suitable period of supervision (if any), rehabilitation programmes (if any) or any measures necessary to reduce the risk of re-offending. Probation Officers are urged to state clear recommendations in their reports in terms of the requirements of the law.
40. Ultimately, in light of the foregoing discussion, it is my view that a custodial sentence is appropriate given the circumstances of this case.
41. Accordingly, I hereby sentence the offender to 30 years imprisonment. This, considering time already spent in custody as per section 333(2) of the *Criminal Procedure Code*.
42. Orders accordingly.

DATED AND SIGNED AT NAIVASHA HIGH COURT (VIRTUALLY) THIS 4TH DAY OF JUNE, 2025.

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R. MWONGO

JUDGE

Delivered in the presence of:

1. Accused present at Naivasha Prison.
2. Murithi for Accused.
3. Owuor for the Victim's family.
4. Maingi for the State.
5. Francis Munyao - Court Assistant.

