



Republic v Kaloki (Criminal Case 2 of 2018) [2025] KEHC 9606 (KLR) (2 July 2025) (Sentence)

Neutral citation: [2025] KEHC 9606 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE 2 OF 2018
AN ONGERI, J
JULY 2, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRED MUIYA KALOKI ACCUSED

SENTENCE

1. The Accused Person was convicted with the murder of Halifa Kimathi Hassan.
2. The particulars are that on the night of 17th February 2018 at Timbila village, Holili – Voi bypass in Taveta Sub-County within Taveta County, the Accused Person murdered Halifa Kimathi Hassan.
3. The Probation Officer filed a pre-sentence report dated 25th June 2025 which this court has duly considered.
4. The learned defence counsel in his mitigation said that the pre-sentence report is favourable as it states that the Accused Person is viewed as respectful and valuable person impacting positive values in the community.
5. The Accused Person is a first offender and he is remorseful for the offence.
6. The offence of murder is a serious one and the law prescribes a death penalty in appropriate cases.
7. The Accused Person accosted the deceased, a disabled man and killed him because the deceased threatened that he would kill the Accused Person's nephew (PW2) on allegations that PW2 had stolen rabbits from the deceased's home.
8. The Accused Person should have reported the issue to the police instead of killing the deceased.
9. I have considered the mitigating circumstances in this case.



10. The offence of murder under Section 203 as read with Section 204 of the *Penal Code* carries a mandatory death sentence, though the Supreme Court of Kenya in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR declared the mandatory nature unconstitutional, granting courts discretion to impose appropriate sentences based on the circumstances of each case.
11. However, the gravity of the offence remains a key consideration, as reiterated in *Joseph Kaberia Kabinga & 11 others v Attorney General* [2019] eKLR, where the court emphasized that the death penalty may still be imposed in the most severe cases.
12. In this instance, the Accused Person was convicted of murdering Halifa Kimathi Hassan, a disabled man, in an act of vigilante violence rather than pursuing lawful avenues such as reporting the alleged threats to the police.
13. While the Accused is a first offender, remorseful, and regarded positively in the community, the circumstances of the offence are aggravating.
14. The deceased was particularly vulnerable due to his disability, and the Accused's actions were premeditated, as he chose to confront and kill the deceased instead of seeking legal redress.
15. Courts have consistently held that such aggravating factors outweigh mitigation, as seen in *Jared Koita Injiri v Republic* [2019] eKLR, where the court upheld a death sentence despite mitigating factors due to the brutality of the crime.
16. Human life is sacred and no one is allowed to take the law into their hands to terminate the life of another for whatever reason.
17. Balancing the mitigating factors against the gravity of the offence, the court finds that a custodial sentence is more appropriate than the death penalty in this case.
18. The Accused's clean record and remorse, as captured in the pre-sentence report, justify a lenient sentence, but the nature of the crime demands a substantial term to reflect societal condemnation and deterrence.
19. Following the precedent in *Thomas Mbau Muia v Republic* [2021] eKLR, where the court substituted the death penalty with a 30-year sentence for murder with mitigating circumstances, this court hereby sentences the Accused Person to 30 years imprisonment.
20. Right of appeal explained.
21. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 2ND DAY OF JULY, 2025 VIRTUALLY AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Accused

