



**Republic v Mwachala & another (Criminal Case E003 of 2021)  
[2025] KEHC 9528 (KLR) (2 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 9528 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL CASE E003 OF 2021  
AN ONGERI, J  
JULY 2, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**HENRY NGINGO MWACHALA ..... 1<sup>ST</sup> ACCUSED**

**MATHEW MAGENDA MWACHALA ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The two accused persons in this case, were charged alongside two others who were acquitted under Section 215 of the CPC with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars were that the Accused Persons murdered FRancis Mwakio Mwakitoi on 10<sup>th</sup> March 2021 at Ngilinyi village, Wundanyi Subcounty within Taita Taveta County.
3. The two Accused Persons were found guilty and convicted under Section 215 of the CPC.
4. The Probation Officer filed pre-sentence reports in respect of the Accused which this court has duly considered.
5. The two Accused Persons who are brothers are not suitable for a non-custodial sentence.
6. This court has considered the mitigation by the learned defence counsel in respect of the Accused Persons.
7. The offence of murder is a serious one for which the law provides for a death penalty.
8. I have considered the case of Muruatetu =Versus= Republic (2017) eKLR where the Supreme Court held that the mandatory death penalty is unlawful.



9. However the Supreme Court did not outlaw the death penalty but said it is reserved for deserving cases.
10. In the current case, this court takes into account the mitigating circumstances in this case.
11. In sentencing the two accused persons, Henry Ngingo Mwachala and Mathew Magenda Mwachala, for the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, this court has carefully considered the circumstances of the case, the pre-sentence reports, the mitigation advanced by the defence, and the applicable legal principles as established in Kenyan jurisprudence.
12. The offence of murder carries a severe penalty, including the possibility of a death sentence, though the mandatory nature of the death penalty was declared unconstitutional by the Supreme Court of Kenya in *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR.
13. The court held that while the death penalty remains a lawful sentencing option, it should only be imposed in the most egregious cases, and judges must exercise discretion in sentencing, considering the unique circumstances of each case and the offender.
14. In *Joseph Kaberia Kahinga & 11 Others v Attorney General* [2019] eKLR, the High Court reaffirmed the principles set out in *Muruatetu*, emphasizing that sentencing must be individualized, proportionate, and consider mitigating factors such as the accused's age, character, and potential for rehabilitation.
15. The Probation Officer's reports in this case indicate that the accused persons are not suitable for a non-custodial sentence, given the gravity of the offence and the circumstances surrounding the murder of Francis Mwakio Mwakitoi.
16. Further, in *Jared Koita Injiri v Republic* [2019] eKLR, the Court of Appeal underscored that while the death penalty is not mandatory, it remains an appropriate sentence in cases involving extreme violence or premeditation.
17. However, where mitigating factors exist—such as the possibility of remorse, the absence of prior criminal records, or the accused's role in the offence—a lesser sentence may be warranted.
18. Having considered the mitigation presented by the defence, including the personal circumstances of the accused, and balancing the need for retribution, deterrence, and rehabilitation, this court finds that a custodial sentence is appropriate.
19. The accused persons Henry Ngingo Mwachala and Mathew Magenda Mwachala are each sentenced to twenty (20) years imprisonment.
20. The sentences to run from the date of their initial arraignment on March 25, 2021, in accordance with Section 333(2) of the *Criminal Procedure Code*, which mandates that the sentence period should account for pre-trial detention.
21. The accused have a right of appeal to the Court of Appeal within 14 days if aggrieved by this sentence.
22. The sentences will start to run from March 25, 2021 when the Accused Persons were first arraigned in court.

**DATED, SIGNED AND DELIVERED THIS 2<sup>ND</sup> DAY OF JULY 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**



In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Accused Persons

