



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mwanzia (Criminal Revision E021 of 2023)
[2025] KEHC 9477 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CRIMINAL REVISION E021 OF 2023**

**LW GITARI, J
JULY 1, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHNSON MUTHOKA MWANZIA ACCUSED

RULING

1. The accused was charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). It was alleged that on 23/10/2023 he murdered Musembi Mwanza who is his brother. Upon being arraigned in court, he pleaded not guilty. He subsequently offered plea bargaining with the state and the state agreed and reduced the charge to manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
2. It was alleged that on 26/10/2023 he unlawfully killed Musembi Mwanzia. The facts were narrated and were as follows:

On 26/10/2023 the accused was engaged in a tussle with his brother who is the deceased in this case over accusations by accused that deceased was stealing items from home and selling them to get money to buy brews. The accused got hold of the deceased who was running away and started beating him while tying his hands and dragging him home.

The accused was using a stick to beat the deceased. The next day the deceased was in a bad condition due to the beatings and was taken to hospital while bleeding from the mouth and nose. The accused and his siblings took the deceased to hospital. The deceased later succumbed to the injuries. The accused and his brothers reported at Nzambani police station.



Investigations were conducted. A postmortem was done at Kitui Hospital. The doctor formed the opinion that cause of death was severe head injury as a result of blunt trauma which was consistent with assault.

The postmortem form was produced as exhibit. The accused was later arrested and charged with murder which has been reduced to manslaughter.

3. The accused admitted the facts and was accordingly convicted on his own plea of guilty. The prosecution urged the court to treat him as a 1st offender. The counsel for the accused in mitigation urged the court to consider that, the accused is a family man and is the sole bread winner. She has also urged the court to note that the accused was disciplining the deceased for truancy. He is the one who took the deceased to hospital and reported to the police. That he acted at the heat of the moment and the family has forgiven him. She urged the court to treat the accused with leniency and consider a none custodial sentence.
4. I have considered the pre-sentence report which shows that the family has come to terms with the matters in this case which involves brothers and have forgiven the accused. The accused did not commit the offence intentionally. It was unfortunate that the intended disciplining resulted in death. The Probation Officer has recommended a Probation Sentence.
5. I however note that the offence is serious. The offence should be treated with the seriousness that it deserves by meting out a deterrent sentence. I however note that the plea of guilty which has saved judicial time.
6. I sentence the accused to serve seven years which will run from 11/12/2023. The last three years of the sentence to be served on probation.

DATED, SIGNED AND DELIVERED AT KITUI THIS 1ST DAY OF JULY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

