



**Republic v Mwendwa (Criminal Case E030 of 2024)  
[2025] KEHC 13165 (KLR) (24 September 2025) (Sentence)**

Neutral citation: [2025] KEHC 13165 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E030 OF 2024  
RM MWONGO, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BENSON DAVID MWENDWA ..... ACCUSED**

**SENTENCE**

**The Charge**

1. The accused was charged with murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars of the offence are that on the night of 24<sup>th</sup>/25<sup>th</sup> September 2024 at Gwakarigu village in Gasavari sub-location Mutuobare location in Mbeere Sub - county in Embu County the accused murdered Jane Mwendu Kilonzi.
2. The accused pleaded not guilty and the plea was duly entered.

**Plea-Bargaining Agreement (PBA)**

3. At the point of pretrial, the parties entered into a Plea-Bargaining Agreement dated 15<sup>th</sup> April 2025 signed by the accused, his advocate and the prosecution counsel. The accused pleaded guilty to the offence of manslaughter contrary to section 202 as read with Section 205 of the Penal Code. The PBA was availed in court together with court’s Compliance Form for recording the plea agreement and the Prosecution’s fact sheet.
4. The court was satisfied that the accused person understood his rights under section 137F of the Criminal Procedure Code, having signed acknowledgement thereto, before entering into the PBA. Consequently, the Plea Agreement was adopted as part of the court record.



5. Accordingly, the accused person was convicted with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Under Section 205 of the Penal Code, the statutory punishment for Manslaughter is imprisonment for life.

### **Mitigation**

6. In mitigation, the accused person stated that he is 41 years old and at the prime of his life. He works as a mason and is the sole breadwinner for his family. He was remorseful for the death of the deceased and he regretted his actions which were motivated by his drunkenness. He prayed for a lenient sentence so that he can continue being useful in the community.

### **Response to Mitigation**

7. In response to mitigation, the prosecution stated that the deceased was a widow and a mother to 8 children. The accused killed her because she rejected his advances and did not want to be involved with him that night, even though they were in a romantic relationship. The deceased's children have remained under the care of the deceased's friends.
8. The prosecution urged the court should respond strongly to this incident which amounts to femicide, a rising menace in the country. The prosecution proposed a 40 years' imprisonment sentence that would serve as a deterrence to acts of violence against any gender.

### **The Probation Officer's Pre-Sentence Report (POR)**

9. According to the probation officer's report dated 21<sup>st</sup> May 2025, the accused person was separated from his wife, with whom he had been having squabbles for sometime, over his drinking habit. He moved to Gwakarigu where he was working as a farmhand and he got into a relationship with the deceased, a widow. The deceased's children did not support the relationship but it subsisted in any event. The accused admits to killing the deceased in a crime of passion because the deceased's family did not support him relating with her.
10. The deceased's children were of the view that following the death of their father in September 2023, their mother moved on too fast when she started dating the accused in January 2024. They stated that the accused did not disclose much about himself to them and he used to have outbursts of anger. They are bitter about the loss of their mother in the hands of the accused who has reduced them into total orphans. The deceased's extended family is bitter about the death of the deceased and they prefer that the accused is sentenced to the maximum sentence available.
11. The accused's mother is ready to support the deceased's children as a form of restitution and she prayed for leniency in sentencing. The probation officer relayed this information to guide the court in sentencing, but made no recommendation for sentencing, leaving it to the Court's discretion.

### **The Facts**

12. The facts of the case are as follows:
  1. On 24<sup>th</sup> September, 2024 the accused person and the deceased who were cohabiting at the deceased's house retired to bed to sleep. An argument arose between the deceased and the accused person when the deceased asked the accused person to sleep in her son's house instead of sleeping together in the deceased's house as they often used to. The accused person asked the deceased if there was any problem and sought to know the reason she wanted him to sleep in her son's house.



2. The deceased told him that he should sleep there and if he was not okay with that, he should go his house sleep there and come back the following day. The accused person then got infuriated and took a plunk of wood and hit her on the head twice and she fell down and became unresponsive. She then regained consciousness and he took her up by her hand and led her to the farm towards the river. The accused person continued talking to her and when she failed to respond, he continued assaulting her using his hands and a plunk of wood until she breathed her last. He later threw her in the river and went back to their house.
3. The accused person thereafter left and on 26<sup>th</sup> September 2024 surrendered himself at Kanyonyo Police Station where he was taken by police officers from DCI Mbeere South. He then intimated to the Investigating Officer, Cpl. Mwonga whilst in custody that he wished to make a confession and gave the contacts of his mother as his representative.
4. On 02<sup>nd</sup> October, 2024 the Investigating Officer escorted the accused person to the Confession recording room and handed him over to CI Janet Akelo who recorded his confession in the presence of his mother. The police visited the scene and removed the deceased's body to Embu Level V Hospital Mortuary, where the Post Mortem was conducted on 1<sup>st</sup> October, 2024 by Dr. Wangari Kamau who formed the opinion that the cause of death was severe head injury due to blunt force trauma consistent with assault.
5. On 07<sup>th</sup> October, 2024 the accused person was examined by Dr. Joseph Thuo, Consultant Psychiatrist at the said hospital, who found him fit to stand trial. The murder weapon being a broken stick with blood stains was recovered at the scene of murder. The accused person was then charged with the offence of Murder, which has now been reduced to Manslaughter.

### **Analysis and Determination**

13. The court in this matter is guided by the provisions of the Judiciary Sentencing Policy Guidelines 2023 as amended following the direction of the Supreme Court in the case of *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (*Muruatetu 1*).
14. Under section 205 of the Penal Code, the accused is liable to face a punishment of life imprisonment. In April 2025, the Supreme Court found the life imprisonment sentence to be lawful and applicable. This was the finding 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 case*) where it was held that only parliament bears the power to revise a sentence prescribed under a statute.
15. Despite this, the court should exercise its discretion given the circumstances of the case. The deceased and the accused were involved in a romantic relationship. On the night of the incident, the deceased wanted the accused to sleep in a different house but the accused refused and he assaulted her, causing her death. The deceased's husband had died a few months before her relationship with the accused began.
16. The prosecution has recommended a sentence of 40 years imprisonment as a deterrence while the accused has prayed for leniency. In mitigation, the accused expressed remorse and stated that he was overcome by emotions at the time of the offence. It is evident from the POR that the death of the deceased resulted in her 8 children being total orphans. They are at different stages in their lives but there is a lot of difficulty that they are experiencing in the absence of their mother.
17. In the circumstances, a custodial sentence is appropriate, given the aggravated manner in which the accused brutally beat the deceased to death when she had done no ill.



**Disposition**

18. In my view, the accused person deserves a 30-year sentence of imprisonment.

19. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Accused Person present in Court
2. Ms. Mwangi for Accused
3. Miss Nyika for the State
4. Francis Munyao - Court Assistant

