



**Republic v Mwamburi (Criminal Case E005 of 2024)
[2025] KEHC 12817 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE E005 OF 2024
AN ONGERI, J
SEPTEMBER 19, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

VALENCIA KIJALA MWAMBURI ACCUSED

JUDGMENT

1. The Accused Person was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code Cap. 63 Laws of Kenya.
2. The Accused Person entered into a plea bargain agreement and the charge was reduced to manslaughter contrary to Section 202 as read with Section 205 of the Penal Code to which the Accused Person pleaded guilty.
3. The particulars of the charge of manslaughter were that on 8th May 2024 at 16hours at Jipe Village in Maktau Location, Mwatate Subcounty, within Taita Taveta County, the Accused Person unlawfully killed Elizabeth Mwakio.
4. The facts of the case were as follows:-
5. The deceased person a minor aged one year and three months old was discovered inside a pit latrine which was unblockable by her mother Catherine Wanjala Mwamburi.
6. On the 8th of May 2024 the deceased was left under the care of the accused by the mother of the deceased Catherine Wanjala at Maktao village.
7. The grandmother to the deceased Agnes Anyika Nyange was within the compound which she shares with her son who is married to the mother of the deceased.



8. At around 1600hours the deceased's grandmother saw the accused heading to the toilet while the deceased was following her behind. The accused stayed for long at the toilet which was few meters from the house where the deceased grandmother was sitting inside but could see outside clearly.
9. On return from the pit latrine the deceased's grandmother saw the accused was alone and she enquired about where about of the deceased and that is when the mother of the deceased overheard the conversation between the grandmother to the deceased and the accused the mother to the deceased took the torch and went to the pit latrine where she saw her child the deceased down inside the pit latrine.
10. Later the mother to deceased screamed seeking assistance to retrieve the deceased and the neighbours responded and managed to break the concrete and retrieved the deceased.
11. After the deceased was retrieved, she had already succumbed and DCI Mwatate were informed where they arrived and interrogated the accused and took the body to the body of the deceased for preservation to Moi Hospital Mortuary.
12. On the 12th May 2024 post mortem was conducted and the result on examination confirmed that the deceased died of asphyxia due to drowning in a fecal matter (pit latrine.)
13. The accused person was charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code which has now been substituted to that of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.
14. The Accused Person was convicted on her own plea of guilty.
15. The Probation Officer filed a pre-sentence report dated 16th September 2025 detailing the family background of the offender, her personal profile, the circumstances of the offence, offender's attitude among other issues.
16. The defence Counsel gave mitigation on behalf of the Accused Person.
17. From the circumstances of the offence and pre-sentence report filed herein this court has established that the Accused Person is a single mother of one child aged 2 years old.
18. She is aged 22 years. She dropped out of school due to pregnancy.
19. Her child was committed to Bura Rescue Centre since no one was willing to take care of him.
20. The Accused Person is epileptic and she also suffers mental problems including a tendency to be suicidal.
21. The Probation Report has recommended a non-custodial sentence for purposes of being taken through counselling aimed at (i) Cognitive restructuring and (ii) Problem solving techniques.
22. The Probation Officer has also recommended counselling for the family to cope with the grief associated with the loss of the child.
23. The Court has considered the aggravating circumstances of this tragic case which are as follows:
 - i. The gravity of the Offence: A life, and particularly that of a defenseless infant of one year and three months, was lost. The sanctity of human life is a fundamental value that the court must uphold. The death of the child has caused immeasurable and permanent grief to the family.
 - ii. The breach of Trust: The deceased was left under the care and protection of the Accused Person. Her failure to ensure the safety of the child constituted a profound breach of that trust.



- iii. The nature of Death: The facts reveal a particularly distressing and terrifying end for the victim, who drowned in a pit latrine.
24. The court has also considered the following compelling mitigating factors:
- i. Plea of Guilty: The Accused person saved the Court and the State precious time and resources by accepting responsibility and entering a plea of guilty at the earliest opportunity. This is a sign of remorse and is a factor that must be accorded significant weight in her favour.
 - ii. The Accused person's young Age: The Accused is a youthful offender, aged only 22 years. The law and public policy favour the rehabilitation of young offenders to give them a chance to reform and become productive members of society.
 - iii. The Accused's personal Circumstances: She is a single mother of a two-year-old child who is currently at Bura rescue centre.
 - iv. She has been in custody since 22/5/2024 to date and it is noted that separating her from her child for a prolonged period would cause significant secondary hardship to an innocent party.
 - v. Her health Status: The Pre-Sentence Report indicates that the Accused Person suffers from epilepsy and mental health challenges, including suicidal tendencies. The prison environment is ill-suited to address these specific and delicate health needs, which require specialized medical and psychological intervention.
 - vi. The Accused person is remorseful: The plea of guilt itself is an indicator of remorse. The Probation Officer's report does not suggest a remorseless or uncooperative attitude.
25. The Accused Person is hereby sentenced as follows:
- i. The Accused person shall serve a probation period of three (3) years under the supervision of a Probation Officer.
 - ii. The terms of this probation order shall be mandatory counselling as recommended, focusing on cognitive restructuring and problem-solving techniques. She shall attend all scheduled sessions as directed by the Probation Officer.
 - iii. She shall comply with all treatment plans for her epilepsy and mental health as prescribed by a medical professional. The Probation Officer shall liaise with medical providers to ensure compliance.
 - iv. She shall not commit any other offence during the period of probation.
 - v. The Probation Officer is directed to facilitate and encourage counselling for the family of the deceased, as recommended, to aid in their healing process.
26. The Accused is advised that failure to comply with any of the conditions of this probation order may result in her being brought back before this Court for re-sentencing, which may include a custodial sentence.
27. Orders accordingly.

**DATED, SIGNED AND DELIVERED THIS 19TH DAY OF SEPTEMBER 2025 IN OPEN COURT
AT VOI HIGH COURT.**

**ASENATH ONGERI
JUDGE**



In the presence of:-

Court Assistant: Millicent/Mabishi

