**Cox v Republic (Criminal Appeal E099 of 2021)**
**[2025] KECA 1488 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KECA 1488 (KLR)

**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL AT ELDORET**

**CRIMINAL APPEAL E099 OF 2021**

**JM MATIVO, PM GACHOKA & WK KORIR, JJA**

**SEPTEMBER 19, 2025**

**BETWEEN**

**GEOFREY BARASA COX ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(An appeal against the judgment of the High Court at Kapenguria (R.N. Sitati, J.) dated 29th May 2019 in HCCRC No. 1 of 2018)***

## JUDGMENT

1. Geofrey Barasa Cox, the appellant, is before us challenging a conviction for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that on the night of 16th and 17th February 2018 at Keringet Trading Centre in West Pokot County, the appellant murdered Beatrice Ekidor. Upon conviction, the appellant was sentenced to serve 35 years in prison.

2. In his memorandum of appeal, the appellant raises eight grounds of appeal, essentially asserting that the evidence adduced was insufficient to sustain the charge of murder and that his mitigation was not adequately considered before sentencing.

3. To build the case against the appellant, the prosecution called 12 witnesses. Dr. Jotham Mukhola (PW1) testified that when he conducted an autopsy on the deceased's body on 22nd February 2018, he saw stab wounds on the right upper thigh and between the 3rd and 4th ribs. Internally, he saw a punctured left lung and a cut to the heart. He formed the opinion that the deceased died as a result of acute loss of blood from a penetrating stab wound of the left hemithorax and left ventricle of the heart.

4. Celestine Chemtai Tekweky (PW2) stated that on the material date, she was in the company of the deceased at Anna's bar, where the deceased served as a bar attendant. That while they were there, the

appellant arrived with Ochieng, Musa, Cody, and Irene and were served with drinks. The appellant sat at the counter watching a movie on his laptop. Shortly thereafter, the deceased demanded payment from Ochieng and was given a shilling 1000 note, but she did not have change. At that time, a disagreement ensued between the appellant and the deceased regarding the payment for the drinks, and the appellant slapped the deceased. In return, the deceased threw an empty glass at him before taking off towards Anna's shop with the appellant in hot pursuit. Immediately, thereafter, she heard the deceased scream and saw Anna intervene. The appellant then walked to his house. As they were closing the bar, she heard a sharp cry and while on their way home, they were informed that the deceased had been stabbed to death. After a short while, the deceased's body was taken away by the police.

5. Annah Masita Mcrone (PW3) was the proprietor of a bar and a kiosk at Keringet. The deceased worked in the bar. She recalled that on the fateful day, while she was in her house, the deceased knocked on her door, screaming that the appellant was assaulting her over a bill. On opening the door, she saw the appellant, Irene, Ochieng, Cody, PW2, and an anti-stock theft officer. She went to shut her bar, leaving behind the deceased, the appellant, and PW2, as Irene, Ochieng, Cody, and the anti-stock theft officer followed her to the bar. It was then that he heard a person whose voice he could not identify saying "Cox hufanyi vizuri", meaning Cox, what you are doing is not right, followed by a scream. When she rushed out, she was informed by PW2 that the deceased had died. She reported the matter at Keringet Police Post. She also stated that the appellant was her cousin and that it was he who asked her to employ the deceased.

6. Police Constable Frank Ochieng (PW4) told the trial court that on the material day, he was at Anna's bar alongside his friends, including the appellant. An argument then erupted between the appellant and the deceased over a bill. The deceased walked out, and the appellant followed her. He was later informed that the deceased had been stabbed. He testified that he was too drunk and could not fully recall the events of that night.

7. Corporal Nehemia Obiero (PW5) was on duty at Kapenguria Police Station on the material night when he received a call from Chief Inspector Daniel Kairu notifying him of an incident at Keringet. Together with two other officers, they proceeded to the scene where they found the deceased's bloodied body lying on the ground. He interrogated the people at the scene, who informed him that the appellant had been seen chasing the deceased immediately prior to her sustaining the injuries. They then took the deceased to Kapenguria General Hospital, where it was confirmed that she had succumbed to the injuries. He also stated that the appellant disappeared for a while and was later arrested in Uasin Gishu County and brought to Kapenguria Police Station.

8. Miriam Nyota (PW6) was the landlady of the appellant. She recalled that on 17th February 2018, at around 9.00 a.m., while she was headed to church, she noticed a crowd and policemen around her rentals. The policemen asked her to open the appellant's room, but since she did not have the key, she allowed the police officers to gain access in any other way they wished. She also stated that the appellant had been her tenant for three years. The police broke down the door, gained access to the house and recovered a pair of white sports shoes and a curtain. She later learned that a young lady had been killed near her premises.

9. Jonathan Wafula Makali (PW7) recalled that on 17th February 2018 at around midnight, while he was in his abode, he heard a knock on his door which was preceded by some disturbance outside. Upon opening the door, he encountered the deceased, who was drunk and bleeding. He stepped out and enquired from some boys standing by the road what could have happened, only for them to retort that the appellant could have killed the lady. When he went back to the house, he found the lady already dead. On his way to the Police Post to report the matter, he met PW3, and they went to report the

incident to the police. He also stated that despite the appellant living approximately 200 meters away from him, he did not see him that night.

10. Ben Saidi Barasa (PW8) recalled that on 17th February 2018, he received a call from PW3 informing him that the appellant, who is his nephew, had killed her bar attendant. He proceeded to Keringet but did not find PW3 or the appellant either physically or on the phone. The witness averred that he saw the police break into the appellant's house and recover blood-stained sports shoes and window curtains. He also stated that when he eventually spoke to the appellant, he told him that he was far away and that he had not committed the offence.

11. Joash Jaramba (PW9) was a gambling machine operator in Turbo, Uasin Gishu County. He recalled that on 29th March 2018 at around 1.00 p.m., police officers went to his premises and asked him to accompany them to the Turbo Administration Police Camp. At the station, he found the police officers, the appellant and Bernard Kariuki (PW10). He was then asked whether he knew the appellant, and he confirmed that he knew him, as he was his friend. PW9 further testified that when the appellant returned to Turbo five days earlier, he escorted him to a dentist before they parted ways. The witness testified that he was nevertheless arrested and taken to Kapenguria Police Station, where he was released on cash bail before later being turned into a state witness.

12. Bernard Kariuki Kinyanjui (PW10) worked as a motorcycle rider in Turbo. He was also arrested on 29th March 2018 at about 1.00 pm and taken to the Turbo Administration Police Camp. While there, he was questioned whether he knew the appellant, to which he confirmed. He was then arrested because he had been ferrying the appellant around in Turbo. He was escorted to Kapenguria Police Station. where he was held for three days before being released on police bond. He also stated that he only knew the appellant since they played pool together and that he did not know what offence the appellant had committed.

13. Administration Police Constable Stephen Kiprop Biwott (PW11) recalled that on 28th March 2018, while he was attached to Turbo Administration Police Camp, DCI officers from Kapenguria asked them to track the appellant, whom they coincidentally knew. The next day, at around noon, with the help of an informant, they apprehended the appellant at Black Street. He also stated that the appellant informed them that he lived with PW9 while PW10 ferried him around on a motorbike.

14. Police Constable Evans Waguda (PW12) testified that on 17th February 2018, he was assigned to investigate the matter. Together with the DCIO, they proceeded to the suspect's house, where they drew a sketch plan and recovered blood-stained white sports shoes and curtains. When they interrogated the people at the scene, they established that there was a brawl between the appellant and the deceased at Anna's bar before the deceased left with the appellant in hot pursuit. That soon thereafter, the deceased was stabbed about 100 meters from the bar. They also visited the scene from where the deceased's body was recovered, which was about 50 meters away. Forensic analysis of the blood samples taken from the recovered items did not match that of the deceased. The appellant was later arrested after he was traced through his mobile phone and charged.

15. Placed on his defence, the appellant testified that he was a motorcycle rider and that he knew the deceased, who was married to Bamusse in the village, and that she worked for his sister, Anna, as a barmaid. He recalled that he was in his Keringet house on 16th February 2018 but left on 17th February 2018 at dawn. He proceeded to Eldoret, where he plied his trade of distributing doughnuts. He confirmed that on 16th February 2018, he was in Anna's bar where he took two bottles of beer. The deceased, who was drunk and rowdy, demanded payment, to which he referred her to PW4. He further testified that together with PW4, Cordy, and Junior, they took the deceased to the proprietor of the bar, where PW4 confirmed that he would pay for the drinks. It was his evidence that immediately

thereafter, he went to his house to sleep. He also stated that he was arrested on 29th March 2018 at the Turbo Police Station when his wife invited him to the station to purportedly solve issues of their children. Upon his arrest, he was escorted with PW9 and PW10 to Kapenguria Police Station.

16. In finding the appellant guilty of murder, the trial Judge held that even though the evidence was circumstantial, it pointed towards the appellant as the only person who could have committed the act leading to the deceased's death. On the issue of malice aforethought, the learned Judge found that the appellant desired only one outcome, that is, to cause death. Consequently, he was convicted of murder and sentenced to 35 years' imprisonment.

17. When this appeal came up for hearing, learned counsel Mr. Oyaro appeared for the appellant, whereas the Assistant Director of Public Prosecutions, Mr. Majale, represented the respondent. Counsel, while relying on their written submissions, also made brief oral highlights. We highlight the submissions in the succeeding paragraphs.

18. In the submissions dated 6th May 2025, Mr. Oyaro argued that the conviction was based on weak, circumstantial, and inconclusive evidence. He cited Abanga alias Onyango vs. Republic Cr. App. No 32 of 1990 (UR) to emphasize that circumstantial evidence must meet three essential tests and submitted that those ingredients had not been met in this case. The case of Parvin Singh Dhalay vs. Republic [1997] eKLR was cited to assert that if co- existing circumstances weaken the inference of guilt, the accused should be acquitted. Counsel maintained that the circumstantial evidence was insufficient and did not rule out reasonable hypotheses of innocence. Referring to Joseph Kimani Njau vs. Republic [2014] KECA 229 KLR, counsel argued that the prosecution failed to prove mens rea and actus reus beyond reasonable doubt. According to counsel, there was no evidence of the cause of death or any direct link between the appellant and the crime scene. Turning to the exhibits recovered from the appellant's house, counsel stated that there were discrepancies as to whether there was blood on the shoes and that there was no corroborating evidence. It was counsel's submission that suspicion alone cannot sustain a conviction.

19. Mr. Oyaro cited Rex vs. Tubere S/O Ochen [1945] 12 EACA 63 to highlight that the factors establishing malice aforethought include the nature of the weapon used, the part of the body injured, and the conduct of the accused after the commission of the offence, and submitted that the prosecution failed to lead evidence to prove any of these factors.

20. Citing Sawe vs. Republic [2003] KECA 182 (KLR), the appellant's counsel additionally argued that the learned Judge erred by requiring the appellant to present a defence while the prosecution had not adduced adequate evidence.

21. Regarding the sentence, Mr. Oyaro contended that the trial Judge did not consider the mitigating circumstances, thus rendering the sentence excessively harsh. Counsel therefore urged us to allow the appeal.

22. Opposing the appeal, Mr. Majale maintained that the evidence supporting the conviction, though circumstantial, was "very cogent" and strongly pointed to the appellant's guilt in the stabbing to death of the deceased. Learned prosecution counsel submitted that the necessary ingredients of the offence of murder were established through the prosecution witnesses, whose testimonies were found to be satisfactory, and that the appellant's defence was very weak and was rightfully rejected by the trial court. He referred to Erick Odhiambo Okumu vs. Republic [2015] eKLR to urge that the guilt of an accused person is not proved by direct evidence alone. The case of Abanga alias Onyango vs. Republic (supra) was cited to highlight the principles of circumstantial evidence and to urge that the evidence in this case met the threshold for the use of circumstantial evidence to convict.

23. We have considered the record and submissions by counsel for the parties in light of our mandate as provided by section 379 (1) of the Criminal Procedure Code. Ours is to reconsider and re- evaluate the evidence adduced before the trial court in order to reach an independent determination on whether or not to uphold the conviction and sentence. In Chepkwony vs. Republic [2025] KECA 1223 (KLR), the duty of this Court on a first appeal was summarized as follows:

> "Our mandate on a first appeal under section 379 (1) of the Criminal Procedure Code is akin to a retrial because it involves a reconsideration of the facts and the legal principles relevant to the conviction and sentence. Therefore, we are obligated to scrutinize the evidence on record to satisfy ourselves whether there was evidence to support the trial court's findings. Only then can this Court decide whether the findings appealed against should be supported. In doing so, this Court should make allowance for the fact that the trial court had an advantage which this Appellate Court cannot have, which is, seeing and hearing the witnesses and being steeped in the atmosphere of the trial. Not only does the trial court have the opportunity of observing the witnesses' demeanour, but also their appearance and whole personality. This should never be overlooked."

24. To secure a conviction in a charge of murder, the prosecution must prove the following ingredients: that the death occurred; that the death was caused by an unlawful act or omission by the accused person; and that the accused person had malice aforethought. (See Roba Galma Wario vs. Republic [2015] eKLR).

25. As to whether the death occurred, the appellant contends that no witness identified the body prior to the postmortem. However, in our view, the evidence on record sufficiently established that Beatrice Ekidor died on the night of 16th and 17th February 2018. Other than the testimony of Dr. Jotham Mukhola (PW1) that he conducted the autopsy, there is the evidence of Celestine Chemtai Tekweky (PW2), Annah Masita Mcrone (PW3), CPL Nehemia Obiero (PW5), and Jonathan Wafula Makali (PW7) that they saw the body of the deceased at the scene. The witnesses at the scene of crime described the injuries suffered by the deceased. There was no alternative version as to how the deceased met her death, leaving the evidence by the aforementioned witnesses unchallenged. Additionally, we note that no issue arose during cross-examination as to the identity of the body upon which post-mortem was performed. Had the issue been raised, the trial court would have been called upon to determine the question of the identity of the deceased, but unfortunately, that was not the case. We therefore find that the cause of death and the fact that the deceased died as a result of the stab wounds were established by the prosecution.

26. The main question is whether the prosecution proved beyond a reasonable doubt that it was the appellant, and nobody else, who committed the unlawful act leading to the death of the deceased. From the evidence on record, there is no gainsaying that none of the prosecution witnesses saw the person who stabbed the deceased. In other words, there was no direct evidence linking the appellant to the death of the deceased; thus, this was a case anchored to circumstantial evidence.

27. When considering a case hinged on circumstantial evidence, the Court in Abanga alias Onyango vs. Republic (CR. App No. 32 of 1990) LLR No. 3975 established the following principles:

> " It is settled law that when a case rests on entirely circumstantial evidence, such evidence must satisfy three tests:
>
> i. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,
>
> ii. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> iii. the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else."

28. The Court reaffirmed these principles in Sawe vs. Republic (supra) when it held that:

> " As we have already pointed out, the evidence in this case was entirely circumstantial. In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other

reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused."

29. We agree with the foregoing statement of the law. It is therefore imperative to appreciate that in dealing with circumstantial evidence, the set of facts taken cumulatively must lead to the drawing of an inference that there is no other plausible explanation of the crime save for the same having been committed by the accused person.

30. In the case at hand, the evidence of Celestine Chemtai Tekweky (PW2), Annah Masita Mcrone (PW3), Police Constable Frank Ochieng (PW4), and the appellant himself is that they were at Anna's bar on the night of 16th and 17th February 2018. It is also no secret that the deceased was the barmaid in that bar and that she was intoxicated as she imbibed alcohol with her friend Celestine Chemtai Tekweky (PW2). The evidence further shows that there was a dispute regarding the bill that had been incurred by Police Constable Frank Ochieng (PW4). Contrary to the appellant's version that they escorted the deceased to her employer's house, Celestine Chemtai Tekweky (PW2), and Police Constable Frank Ochieng (PW4) both confirmed that there was a fight between the appellant and the deceased inside the bar prior to the deceased taking off with the appellant in hot pursuit. Celestine Chemtai Tekweky (PW2) graphically described how the appellant assaulted the deceased before the deceased threw a glass at him. Indeed, in his defence, the appellant admitted that he sustained an injury but denied knowing the person who assaulted him.

31. From the evidence of Celestine Chemtai Tekweky (PW2) and Police Constable Frank Ochieng (PW4), the fight between the appellant and the deceased proceeded to the doorstep of the shop of Annah Masita Mcrone (PW3). The appellant confirmed that they indeed went to Anna's shop, but according to him they were going to report the deceased to Anna. It is not clear as to what happened from there as the witnesses gave varying accounts of the events. However, one thing is clear, both the appellant and the deceased left while Celestine Chemtai Tekweky (PW2) and Annah Masita Mcrone (PW3) went to close the bar. So soon thereafter, the deceased was knocking on the door of Jonathan Wafula Makali (PW7), covered in blood and having suffered serious injuries. From here, there is the evidence of Corporal Nehemia Obiero (PW5), who collected the body from the scene. He stated that in his enquiries from the crowd, he established that the appellant was the chief suspect as a result of his brawl with the deceased early that night.

32. Then came Police Constable Evans Waguda (PW12), who also testified that his investigations pointed him to the appellant as the perpetrator. Additionally, when PW12 broke into the appellant's house, he recovered blood-stained white sports shoes and curtains. This recovery was confirmed by Miriam Nyota (PW6), the appellant's landlady, and Ben Saidi Barasa (PW8), the appellant's uncle, who also signed the inventory. According to PW12, when subjected to forensic analysis, the blood on the white sports shoes did not match that of the deceased. Although the appellant did not testify as to the source of the blood that was found on items recovered from his house, it is not lost upon us that he had sustained an injury during the altercation with the deceased. In his defence, the appellant denied ever owning the shoes, notwithstanding the evidence of the three witnesses who were present when the shoes were recovered from his rented house. At this juncture, it is also imperative to point out that even though the appellant stated that he had gone to sleep and left at 5.00 a.m. on 17th February 2018, he was nowhere to be seen the entire night, despite the commotion that took place approximately 50 meters from his house.

33. It is also on record that attempts to reach the appellant on 17th February 2018 by the police and his uncle Ben Saidi Barasa (PW8) were futile. The appellant, while denying that he received any phone call, acknowledged that he only spoke to his father. This corroborates the evidence of Ben Saidi Barasa

(PW8), that when he talked to the appellant, he denied committing the offence. This set of evidence contradicts the appellant's assertion that he only knew of the deceased's death when he was charged with the offence. Thus, the appellant was proffering nothing but a mere denial of his knowledge of the death. One would then ask why he would do that when the deceased was a person well known to him and one whom he had helped secure a job with Annah Masita Mcrone (PW3).

34. From the evidence above, there is no doubt that the appellant was within the vicinity of the crime on the material night. Further, the appellant had a violent altercation with the deceased that night, a few minutes before she was found stabbed, leading to her death. It is also our finding that the appellant fled the area immediately thereafter. It is also relevant to point out that despite the appellant stating that he lived in Maili Nne, Joash Jaramba (PW9) stated that he arrived back in Turbo five days earlier after being away for five months. Similarly, while in Turbo, Police Constable Evans Waguda (PW12) was capable of tracking his movements and establishing that he interchangeably used three lines, one of which was not registered in his name. Coupled with this is the testimony of Annah Masita Mcrone (PW3) that she heard someone say that what the appellant had done was not right, followed by a scream.

35. In our view, the evidence adduced leaves no alternative version except that it was the appellant who had the motive and reason to assault the deceased. The difference in time between the brawl at the bar and the infliction of the fatal injuries on the deceased is too proximate to be overlooked. The appellant's disappearance from Keringet immediately thereafter and the recovery of blood-stained shoes in his house further eradicate any doubt in our minds that the stabbing of the deceased was by none other than the appellant. The chain created by the available evidence is intricately intertwined, linking the appellant and no other person to the offence. We find that the appellant waylaid the deceased and stabbed her.

36. We depart from this issue by recalling, with approval, the words of the Court in Mungai vs. Republic [2021] KECA 51 (KLR) as follows:

> "Once a person so situated fails to offer a plausible explanation for such accusative evidence linking him to the commission of the crime, section 119 of the *Evidence Act* permits the court to presume the existence of any fact which is likely to have happened, regarding being had to the common course of natural events and human conduct."

37. The next issue is whether the appellant was of malice aforethought when he waylaid the deceased and stabbed her. The ingredients of malice aforethought under section 206 of the Penal Code include an intention to cause the death of, or to do grievous harm to, any person; knowledge that the act or omission causing death will probably cause the death of, or grievous harm to, some person; and an intent to commit a felony. In this case, the deceased succumbed to death as a result of multiple stab wounds. According to Dr. Mukhola, the body had a stab wound on the right upper thigh and the left anterior of the chest. Internally, there were injuries to the left lung and heart. He formed the opinion that the deceased died due to acute loss of blood from a penetrating stab wound of the left hemithorax and left ventricle of the heart.

38. From the foregoing, we do not doubt, even without the murder weapon being produced, the injuries clearly show that the appellant's intention was not only to cause harm to the deceased but to end her life. In light of the evidence adduced, we find that the charge of murder was proved beyond reasonable doubt against the appellant. We therefore affirm the conviction by the learned trial Judge.

39. Turning to the appeal against sentence, the appellant contends that the same is harsh and that it was passed without considering his mitigation. Ordinarily, an appellate court will approach the question

of sentence with deference, as the same is always at the discretion of the trial court. An appellate court may only interfere with the sentence where the same is manifestly excessive or where the trial court overlooked some material factor, or considered some wrong material, or acted on a wrong principle. These principles were stated in Bernard Kimani Gacheru vs. Republic [2002] eKLR, thus:

> " It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

40. A rehash of the principles undergirding the sentencing procedure is necessary. The conviction having arisen from a full trial before the High Court, section 329 of the Criminal Procedure Code allowed the trial court to receive such evidence as it thought fit in order to inform itself as to the sentence or order properly to be passed or made. The learned trial Judge was therefore within the law when she called for the presentence report. The proviso to section 333(2) of the Criminal Procedure Code requires courts to take into account the period during which the accused person has been held in pre-sentence custody when passing sentence. The repealed Sentencing Policy Guidelines, 2016, were applicable at the time, and as per paragraph 23.9 the learned Judge was required to conduct a balancing act between the aggravating and mitigating factors when passing sentence.

41. We have looked at the sentencing proceedings commencing from 29th May 2019 and culminating in the ruling dated 3rd July 2019. We note that, whereas on 29th May 2019, learned counsel Ms. Bartilol mitigated on behalf of the appellant, and the court proceeded to request a presentence report, the learned Judge eventually passed sentence solely based on the presentence report. There was no reference at all to the appellant's mitigation. We also note that the learned Judge never took into account the period spent in custody by the appellant prior to his sentencing. In our opinion, the failure by the learned Judge to refer to the appellant's mitigation was a misstep which entitles us to relook at the sentence.

42. We have anxiously considered the circumstances of this case, the presentence report and the appellant's mitigation as well as the subsisting sentencing jurisprudence from this Court. The aggravating factors were that the appellant killed the deceased for no apparent reason. We say so because the evidence that was adduced was that the dispute over the bill was between the deceased and PW4. On his part, the appellant's mitigation was that he was a first offender and remorseful. He also had a wife and two children who depended on him. Further, that he had been in custody since 2018 and had learned his lessons. In Muruatetu & Another vs. Republic; Katiba Institute & 5 Others (Amicus Curiae) [2017] KESC 2 (KLR), the Supreme Court highlighted the mitigating factors in murder cases as follows:

> " (a) age of the offender; (b) being a first offender;
>
> (c) whether the offender pleaded guilty; (d) character and record of the offender;
>
> e. commission of the offence in response to gender-based violence;
>
> f. remorsefulness of the offender;
>
> g. the possibility of reform and social re-adaptation of the offender;

h. any other factor that the court considers relevant."

43. In the case at hand, the appellant was a first offender who had expressed remorse. However, the circumstances under which the deceased met her death were inexcusable. She was killed for executing her duty by demanding payment for drinks consumed. Even though the mitigation of an accused person is among the factors to be considered in determining an appropriate sentence, we do not think the learned Judge would have imposed a different sentence had she considered the appellant's mitigation. We are therefore not convinced that we should interfere with the sentence meted upon the appellant. The appeal against sentence is therefore dismissed. However, having found that the learned Judge failed to comply with the proviso to section 333(2) of the Criminal Procedure Code, an appropriate order on the date of the commencement of the appellant's sentence shall issue accordingly.

44. In the end, we dismiss the appeal against conviction and sentence. However, the appellant's sentence of 35 years' imprisonment shall run from 6th April 2018, when he was first arraigned in court.

**DATED AND DELIVERED AT NAKURU THIS 19TH DAY OF SEPTEMBER 2025.**

**J. MATIVO**

**.....**

**JUDGE OF APPEAL**

**M. GACHOKA C.Arb, FCIArb.**

**.....**

**JUDGE OF APPEAL**

**W. KORIR**

**.....**

**JUDGE OF APPEAL**

*I certify that this is a True copy of the original*

*Signed*

Deputy Registrar