



**Kirui v Republic (Criminal Appeal E001 of 2022)
[2025] KECA 1484 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KECA 1484 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL E001 OF 2022
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
SEPTEMBER 19, 2025**

BETWEEN

KENNEDY KIPRONO KIRUI APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the conviction and sentence of the High Court of Kenya at Kericho (A.N. Ongeri, J.) dated 22nd March 2021 and 19th November 2021 respectively in HCCRC No. 16 of 2016)

JUDGMENT

1. The appellant, Kennedy Kiprono Kirui, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were that on 6th May 2016 at Chepseon Trading Centre in Londiani District within Kericho County, the appellant murdered Judy Cheron. When the appellant was arraigned before the trial court, he entered a plea of 'not guilty' to the offence. After a full trial, the appellant was convicted of the offence and sentenced to death.
2. The appellant is aggrieved by those findings. He filed his notice of appeal dated 30th November 2021. At the hearing of his appeal, the appellant, through his advocate, learned counsel Mr. Kenda, orally raised the following grounds disputing the findings of the learned judge: that the learned judge erred in law and in fact in finding that the prosecution proved the offence of murder beyond reasonable doubt; that malice aforethought was not proved to the required standard; and that the learned judge erred in the sentencing him to death and it was excessive and disproportionate to the circumstances before the trial court. For those reasons, the appellant urged this Court to quash his conviction. In the alternative, he prayed that the sentence of death be set aside and be substituted with a more lenient and appropriate sentence.
3. The appeal was heard on 12th May 2020. As alluded earlier, the appellant was present and represented by learned counsel Mr. Kenda while Senior Assistant Director of Public Prosecution, Mr. Omutelema



represented the respondent. The appeal was heard on the basis of the parties diametrically opposed written submissions.

4. The appellant's written submissions dated 9th May 2025 argued that the ingredient of malice aforethought was not established to the satisfactory standard set out by law. He argued that while the death of the deceased was not contentious, the Court should consider the fact that he reacted emotionally as the deceased left their children unattended in order to engage in extramarital affairs. He submitted that he acted emotionally and had no intention of killing the deceased. For those reasons, he prayed that his conviction be quashed.
5. The appellant then urged this Court to interfere with his sentence of death should it uphold the conviction. He urged this Court to reconsider his mitigation, the decision of Supreme Court in Francis Karioko Muruatetu & Others vs. Republic [2017] eKLR as well as the period he had spent in custody, since 2016, to commute him to a sentence of imprisonment.
6. The respondent opposed the appeal. It filed its written submissions, list of authorities and case digest all dated 5th May 2025 to submit that the evidence before the trial court supported the charge of murder. The respondent relied on the direct testimony of PW5, which met the standard of proof in criminal cases, to establish that the appellant murdered the deceased person, Judy Cheron. Thus, all the ingredients of the offence of murder had been proved beyond a shadow of doubt.
7. On the appellant's defence of provocation, the respondent submitted that it was not applicable because the circumstances leading to the death of the deceased were well known to the appellant four days before he murdered her. It submitted that the defence failed to meet the threshold set out in sections 207 and 208 of the Penal Code. Noting that the deceased suffered multiple fatal stab wounds, the respondent submitted that the trial court considered his defence and rightly rejected it as an afterthought. In any event, the appellant had concealed the knife before pouncing on the deceased.
8. Lastly, on the sentence of death, the respondent submitted that the learned judge considered the appellant's mitigation and the circumstances leading up to the offence. It argued that several aggravating circumstances justified the sentence of death. For those reasons, the respondent urged this Court to dismiss the appeal by upholding the conviction and affirming the sentence.
9. We have considered the memorandum of appeal as well as the parties' written submissions, examined the record of appeal and analyzed the law. As a first appellate Court, it has been said over and over again that our duty is to revisit the evidence tendered before the trial court afresh, analyse it, evaluate it and come to our own independent conclusion on the matter but always bear in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and to give due allowance for that. [See Mark Oiruri Mose vs. Republic [2013] KECA 67 (KLR)].
10. The record before us captures the evidence as follows: PW1 Wesley Kimutai testified that on 6th May 2016 he was in his house. It is located at Dandora Estate within Chepseon area. At 6:30 a.m., he heard screams from a woman within a 100m radius. The woman stated that someone had been killed. Immediately, PW1 rushed to the crime scene, which was on the road leading to the lodging where the deceased used to work.
11. On arrival, he found the woman who had been screaming standing on the side, the deceased lying on the ground and a young man on the ground with a kitchen knife nearby. PW1 observed that the deceased was lying on a pool of blood. She was lying on her side while the young man lay facing up. PW1 also observed that the deceased was bleeding near her ear, chest and thigh, while the young man was bleeding from his neck. PW1 recognized them as his tenants and a couple that lived together in his



- rental establishments. PW1 identified the young man in the dock as the appellant. He recalled that he never heard them having any squabbles during the deceased's lifetime.
12. PW1 reported the incident at Chepseon Police Station. He returned to the crime scene with police officers who arrested the appellant and transferred the deceased's body to the mortuary. PW1 recalled that the deceased had not slept at home that night. Her children had been left in the house alone.
 13. PW2 Lily Cherotich Kelelio's evidence was that while on her farm on 6th May 2016 at 9:00 a.m., she received reports from her brother Nathan Sang that the deceased, who was their sister, had been murdered. She identified the deceased's body at the mortuary. Her observations were that the deceased suffered injuries on her ears, neck, shoulders, breasts, chest and upper back. She was also present during the post mortem exercise together with her cousins Lily Ng'etich and Bernard where they identified the body. The same was conducted on 10th May 2016.
 14. PW3 Dr. Kibos Ezekiel, a medical officer working at Kericho District Hospital produced the autopsy report dated 11th May 2016 prepared by his colleague Dr. Gilbert Lang'at. He testified that the post mortem was conducted on 10th May 2016 at Kericho District Hospital.
 15. According to the report, the deceased suffered seven stab wounds on various parts of her body as follows: left side of her neck, left clavicular bone, behind the shoulder, left superior upper back, right medial aspect of the breast and chest below the right breast. She suffered cut wounds on the left ear, right thigh, right palm, trachea, a cut between the 4th and 5th rib, sub-clavian vein and left lobe of the liver. She also suffered a fracture of the 6th rib. The author formed the opinion that the deceased died as a result of severe hemorrhage secondary to multiple stab wounds.
 16. PW4 Inspector David Masinde Kahule, the investigating officer, testified that on the fateful day, he was called by the OCS, and was informed that a murder had occurred at Dandora Estate within Chepseon Trading Centre.
 17. PW4 proceeded to the crime scene in the company of his colleagues. On arrival, he found a young man and young lady both lying on the ground in a pool of blood. The young man had a deep cut in his throat and was unconscious but the young lady was deceased. Photographs of the crime scene were taken. Thereafter, the deceased was taken to the mortuary while the young man was rushed to Kericho District Hospital. The police officers recovered a blood-stained kitchen knife.
 18. The young man, identified by PW4 as the appellant, was admitted and later transferred to Siloam Hospital under police guard. He was discharged on 13th May 2016 and taken for mental assessment. He established during his investigations that the appellant and the deceased person were in a love affair that commenced when they were living in Ngoina area. That their love turned sour when the deceased elected to move to Chepseon where she found employment.
 19. PW4 gathered evidence, interrogated witnesses and charged the appellant with the offence of murder. He produced the broken knife in evidence but admitted that it was not sampled for forensic analysis.
 20. PW5 Beatrice Chelangat testified that she lived in Chepseon Shopping Centre. Her evidence was that on 6th May 2016, while she was preparing breakfast at 6:40 a.m., she heard some noise outside her compound area. She opened her gate to check what was happening and she saw a man and a woman in an altercation. She did not know them. They were quarreling in the Kipsigis dialect on account of the fact that the woman had left their children. The woman was asking for forgiveness.
 21. PW5 intervened pleading with the man to forgive the woman.



Suddenly, the two started physically fighting. They were pushing one another. The man then used his strength to grab the woman's hair and her leg, making her topple to the ground. The man then removed a knife from his faded blue jeans trouser pocket and stabbed the woman on the neck. PW5 closed her gate on seeing this, all the while, hearing the woman screaming, "I am dying."

22. Out of fear and after closing her gate, PW5 ran to the back of her compound behind her house. She then came back to her house and saw through her fence, the man pulling the woman aside. He then raised his green t-shirt and stabbed himself in his stomach and throat. PW5 went into her house and closed the door. Later, at around 11:00 a.m. PW5 found that a crowd had gathered. She went about her business and was later informed that the woman had passed on but the man was alive. She recognized the man as the appellant in the dock.
23. At the close of the prosecution's case, the trial court established that the appellant had a case to answer. He was placed on his defence. His sworn testimony was that the deceased was his wife. On 30th April 2016, he was working at Mama Chela's establishment. Since the pay was little, the appellant sought and was granted employment at Sirikwa in Molo. This meant that he left his home at PW1's rentals in Chepseon where his wife was living with their children. The appellant remained in close contact with the deceased in the coming days as he had found employment in a hotel.
24. On the evening of 3rd May 2016, the appellant tried to call the deceased but her phone was off. He then sent his brother to establish her whereabouts. He reported to him that the deceased was not only absent from their homestead that night but was also having an extra marital affair. At that time, the deceased worked in a bar called Zanzibar.
25. Triggered by the information shared, the appellant requested and was granted leave to travel back home. The appellant traveled on 5th May 2016 to Chepseon. He met the deceased at the stage. She started crying when he inquired what the problem was. Later on, they met at their house. During the night, the deceased was given Kshs. 200.00 to go and buy food. However, she did not return home that night. She in fact packed her things and left.
26. Later the appellant found the deceased at her step mother's place of work. The children were also there. He bought them bread. They later all returned to their home in Chepseon. The appellant then visited his brother until 9:00 p.m. When he came back home, he did not find the appellant at home. He was informed that the deceased was on duty in her place of work. The appellant had imbibed. He was chased away by the bouncers when he went looking for his wife at Zanzibar.
27. The appellant did not sleep well that night. At 4:00 a.m. on 6th May 2016, he retreated back to Zanzibar carrying a knife. He demanded that the deceased be handed over to him. The appellant would later find his wife in a lodging. He found her naked in one of the rooms. After the deceased dressed up, she emerged from the room and met the appellant, where they proceeded to their matrimonial home.
28. After passing the Repentance Church, the appellant inquired from the deceased what the problem was. He asked her the whereabouts of the children. Upon making further questioning, the deceased disclosed to the appellant that she was engaging in prostitution. That, in fact on the previous night, she had been paid Kshs. 7,000.00. The deceased then told the appellant that if he was not satisfied with her prostitution ways, he was at liberty to kill her.
29. The appellant stated that he was in a daze and went into a frenzy. He took the knife that he had and stabbed the deceased because in his own words, the deceased "had sold her body". He was angry. He stabbed her several times. He was emphatic that he had no intentions of killing her. Upon stabbing her, people screamed. He then stabbed himself in the stomach because he was under the impression that he would be lynched. He later woke up in a hospital. He urged the trial court to find that he had



- no intention of killing the deceased because he loved her as his wife. He asked for forgiveness as his children were suffering.
30. The learned judge (Ongeri, J.) considered all the evidence on record and convicted the appellant for the offence of murder. He was sentenced to death. Was the learned judge in error in arriving at these findings? In other words, is this appeal merited? In answering this question, we must establish whether the prosecution proved beyond reasonable doubt the following crucial ingredients in a charge of murder: the death of the deceased, the said death was caused by an unlawful act or omission, the unlawful act or omission was occasioned by the appellant and malice aforethought.
 31. The above facts capture the story of a couple whose story ended tragically. It is not disputed from the evidence of the appellant and that of PW5 that on the morning of 6th May 2016, the appellant stabbed the deceased severally leading to her untimely death. According to the post mortem report, the deceased sustained several stab wounds and cuts. The conclusive opinion from the pathologist was that the deceased died as a result of severe hemorrhage secondary to multiple stab wounds.
 32. According to PW5, on that morning, she overheard the appellant and the deceased in an altercation over their children. She then opened her gate and pleaded with the appellant to forgive the deceased. These pleas however went on deaf ears as the appellant was seen tripping the deceased to the ground and inflicting a stab wound on her body. The appellant corroborated this evidence. He stated that he severally stabbed the deceased when she triggered him by admitting that she was a prostitute.
 33. The deceased used a knife that stabbed the deceased severally on left side of her neck, left clavicular bone, behind the shoulder, left superior upper back, right medial aspect of the breast and chest below the right breast, left ear, right thigh, right palm, trachea, a cut between the 4th and 5th rib, sub-clavian vein and left lobe of the liver. The injuries that the deceased suffered were consistent with the fact that the deceased knew that the act of stabbing her with a sharp object severally would lead to her death.
 34. Taking the above evidence into account, we come to the inescapable conclusion that the trial judge rightly concluded that the deceased's death, caused by an unlawful act, committed by the appellant, who was possessed with malice aforethought were proved beyond any shadow of doubt.
 35. Turning to the appellant's sentence, the learned judge found that the appellant ought to suffer the death penalty. In her view, the learned judge found that the murder was premeditated and the deceased was murdered in cold blood.
 36. As alluded earlier, the death of the deceased was a quintessence of a crime of passion where one lover is killed by their spouse on account of heightened breach of trust. The deceased realized that he had committed an egregious crime when he turned on himself and stabbed himself unconscious. The sad reality is that their children are left parentless, missing out on that primary care and responsibility from their primary custodians. Their mother is deceased, while their father, who almost followed her path, is shouldered with the burden of incarceration for a crime he admittedly committed. While this is the sad reality, the question we must answer is whether the circumstances warrant our interference with the sentence.
 37. The prevailing jurisprudence, after the oft quoted judgement of the Supreme Court in Francis Karioko Muruatetu & Others vs. Republic (Supra) that whereas the death penalty remains lawful in our statute,



the trial judge should consider all the circumstances and has the discretion to impose the appropriate sentence. We note that in this case, the trial Judge imposed the death sentence and stated as follows:

- “4. This Court has taken into account the mitigation given on behalf of the Accused Person by his Advocate and also the contents of the social inquiry report dated 28/9/2021.
5. However, there is evidence that the Accused Person premeditated the Murder and armed himself with intention to inflict harm on the deceased.
6. He looked for her after she had ran away and killed her in cold blood.
7. I have considered the decision in the case of Francis Kairiokor Muruatetu and I find that although the Supreme Court held that the mandatory nature of the death penalty is unlawful, the Supreme Court did not outlaw the death penalty but it said that the same should be reserved for deserving cases.
8. In my opinion, this is a case where the death penalty is deserved considering that the Accused Person premeditated the offence and executed the same in cold blood after looking for the deceased who had run away and he even attempted to kill himself after he had inflicted fatal injuries on her.”

38. Whereas we agree that the learned Judge stated that she had considered the Muruatetu judgement, we find it necessary to interfere with the sentence. The Muruatetu judgement was to the effect that death sentence is a discretionary sentence. Being discretionary, it follows that it is the maximum sentence. As was held in *Bachan Singh vs. The State of Punjab (Bachan Singh) Criminal Appeal No. 273 of 1979 AIR (1980) SC 898* a decision cited in the Muruatetu’s case:

“It is only if the offense is of an exceptionally depraved and heinous character, and constitutes on account of its design and manner of its execution a source of grave danger to the society at large, the Court may impose the death sentence.”

39. In *Charo Ngumbao Gugudu vs. Republic [2011] eKLR*, this Court held that:

“It has long been a principle of sentencing that a maximum sentence should only be meted out to the worst offender under the particular section that the offender is charged.”

40. We take into account the fact that the appellant is a first offender, committed a heinous act of murdering his wife and was committed under circumstances that his wife was having extra martial affairs. It is clear that the appellant overacted and even tried to take his own life. However, taking into account that he has carried a hidden knife and that he did not find the deceased engaging in an extramarital affair, his argument that this was a crime of passion is not persuasive. In our considered opinion and taking all the circumstances into account, it calls for a determinate but lengthy sentence. Accordingly, we find that this case calls for the setting aside of the death sentence with a substitution for an imprisonment term. We set aside the death sentence and substitute the same with an imprisonment term of 40 years imprisonment. The period of sentence shall be computed from the date of the appellant’s arrest.

41. In conclusion, we dismiss the appeal on conviction but set aside the death sentence and substitute it with a sentence of 40 years which shall run from the date of the arrest of the appellant as he was in remand throughout the trial.

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



J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

G.V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

