



**Republic v Wainaina (Criminal Case E005 of 2023)  
[2025] KEHC 13371 (KLR) (Crim) (17 September 2025) (Sentence)**

Neutral citation: [2025] KEHC 13371 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E005 OF 2023  
AM MUTETI, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH WAINAINA ..... ACCUSED**

**SENTENCE**

1. The accused person was charged with the offence of murder contrary to Section 203 as read with 204 of the *Penal Code*.
2. The accused person entered into a plea bargain with the Office of the Director of Public Prosecutions and the charge was reduced from that of Murder to Manslaughter contrary to section 202 as read with 205 of the *Penal Code*.
3. The state filed the Plea Agreement together with a Manslaughter information dated the 10<sup>th</sup> February 2025. The accused person indicated that he was entering into the Plea Agreement voluntarily without promise or benefit of any kind and that he was fully advised by counsel on his rights.
4. The information was read to the accused in open court on the 11<sup>th</sup> February 2025 and he pleaded guilty to the charge. A plea of guilty was entered and the prosecutor presented the following facts;-
5. The Accused and Deceased were married. Both were living in Eldoret. In the year 2021 and they had a family disagreement.  
  
The accused assaulted deceased whereupon the deceased moved out of their house and went to live with Lucy Wanjiru Kimani at Kahawa West in Nairobi.
6. The accused went to the parents of deceased and sought reconciliation. The accused and the deceased moved back together in their house after that visit.



7. . In August 2022, deceased and accused yet again had a disagreement after the accused was gifted a jacket by deceased and he declined to take it accusing deceased of having put charms in the jacket.
8. Accused started assaulting deceased and threatened to kill her.
9. The deceased relocated to Nairobi and was accommodated by one Lucy Wanjiru Kimani.
10. After one month from the time they separated, the accused threatened to kill himself if his wife did not return to him. Deceased resumed communication with accused and the accused assisted the deceased to start a business in Nairobi.
11. The deceased rented a house where she was staying alone.
12. On 5th January, 2023 the accused a shop keeper at Matharu in Uasin Gishu county, travelled from his home in Eldoret to Nairobi to visit the deceased at her place of residence.
13. Accused and deceased had confrontation that evening and the deceased was overheard by a neighbor one Amos Ibwaga Makutwa pleading with the accused not to kill her.
14. On 6th January 2023, deceased and accused were found by members of the public inside the deceased's house lying on a mattress. The matter was reported to DCI Kayole *vide* OB 93/6/01/2023.
15. Police officers visited the scene, broke into the house. Accused was taken to Mama Lucy hospital with injuries. The body of the deceased was moved to city mortuary awaiting post mortem.
16. A Post mortem was conducted on 10th January, 2023 which revealed that the cause of death was head injury due to blunt force trauma. Intestinal haemorrhage was also present.
17. . Accused was arrested on 8th January, 2023 after he was discharged from hospital and escorted to Kayole Police Station.
18. The police recommended the accused to be charged with murder which was eventually reviewed to Manslaughter.
19. The facts as set out above were read over to the accused who admitted them to be true and correct. The accused was accordingly convicted by this court.
20. The accused person through Mr Outa Advocate requested to offer his mitigation in person and he told the court that he regretted what he did.
21. He went on to state that he has reformed and is ready to rejoin society a changed man if released.
22. According to the accused when he went to prison, he was a drunkard but he has since learnt many useful things that will help him in life.
23. The accused also told this court that he has learnt not to take the law into his own hands.
24. Further the accused pleaded with the court for leniency stating that he was remorseful and that the court should be inclined to look into the recommendation from the prison.
25. The accused person also urged the court to consider that he is a first offender.
26. The accused person also urged the court to consider that he has been in custody since 6/11/2023.



27. The court of appeal Uganda in *Kigula v Republic* (2009) UGSC 6 at p 41, said:
- “A trial does not stop at convicting a person. The process of sentencing a person is part of the trial. This is because the court will take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at an appropriate sentence. This is clearly evident where the law provides for a maximum sentence. The court will truly have exercised its function as an impartial tribunal in trying and sentencing a person. But, the court is denied the exercise of this function where the sentence has already been pre-ordained by the Legislature, as in capital cases. In our view, this compromises the principle of fair trial.”
28. The offense of Manslaughter in Kenya attracts a life sentence. The court however retains the discretion to give a lesser sentence depending on the circumstances of a particular case.
29. The aggravating circumstances of a case will lead the court to sentencing the accused person to life imprisonment or to a long prison term. The court will however sentence a person taking into account all the mitigating factors in the case to ensure that justice is rendered to the victim as well as the accused.
30. The sentencing objectives in Kenya have been captured in the Sentencing Guidelines 2023 to be the following: -
- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - e. Community protection: to protect the community by incapacitating the offender.
  - f. Denunciation: to communicate the community’s condemnation of the criminal conduct.
  - g. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - h. Reintegration: To facilitate the re-entry of the offender into the society.
31. The court must bear in mind the above stated objectives in determining the appropriate sentence to mete.32. In the “*Muruatetu Case*”, the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to re-sentencing;
- (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-adaption of the offender;



- (h) any other factor that the Court considers relevant.”
33. All these are matters that a sentencing court must bear in mind in assessing the appropriate sentence in a particular case.
  34. The accused in this matter appears to have had a tumultuous relationship with the deceased. The incessant fights ended up with the accused in hospital and the deceased dead in their own rented house.
  35. It is not easy to tell what exactly happened in the house the night when the deceased did but certainly there was some aspect of violence as is evident from the postmortem report.
  36. The circumstances surrounding the fight between the two on the fateful night shall remain a closely guarded secret by the accused since he did not volunteer to tell it when he was offered an opportunity by the court to mitigate in person. However, the record shows the accused also suffered serious stab wounds in the course of the fight as per the signal contained the bundle of evidence.
  37. The country has been experiencing a worrying trend of domestic violence that has led to the loss of many lives both men and women.
  38. . It is a trend that must be brought to an abrupt end through decisive action by the courts.
  39. . We must restore the respect for human life and dignity. We cannot as a country normalize the taking of human life no matter the excuse. The public needs to know that troubles in marriage cannot be solved through violence and that where a marriage fails the affected persons should happily part ways without resorting to deadly clashes leaving vulnerable children without parents. Denunciation of these killings is called for through sentencing.
  40. . The accused travelled all the way from Eldoret to Nairobi and committed the offense while he was in full control of his faculties.
  41. . The father of the deceased appeared before this court and gave a victim impact statement. He narrated how he had warned the accused severally to desist from his violent tendencies but he had not heeded his advice. According to him a non -custodial sentence would not be ideal considering the past conduct of the accused.
  42. The court has weighed the matter taking into account the youthful age of the accused who at the time of committing the offense was barely 32 years of age. It is not one of those cases where this court would be inclined to give a non-custodial sentence. The presentence report prepared in respect of the accused dated the 2<sup>nd</sup> may 2025 is not favorable either.
  43. In the circumstances I am inclined to sentence the accused person to a period of 7 years imprisonment to run from the date of arrest that being 6<sup>th</sup> January 2023. The court takes cognizance of the fact that the two could have died in the house were it not for the neighbors who reported the matter. The accused person has a right of appeal within 14 days.
  44. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:



Court Assistant: Kiptoo

Kiptoo for the State

Ms Dela for the state

Outa for the Accused

Accused: Present

