

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. E068 OF 2022**

REPUBLIC..

.....PROSECUTOR

VERSUS

MOSES MWANZIA MATHUKU.....ACCUSED

**SENTENCE**

1. The accused pleaded guilty to the lesser but cognate offence of *manslaughter* under a plea agreement recorded on 30<sup>th</sup> July 2025. At the time of that agreement, *four* witnesses had testified against him on the original *information for murder*.
2. It bears repeating that up to that stage, the accused enjoyed the *presumption of innocence*. The conviction and sentence for *manslaughter* is thus based exclusively on the admitted set of facts in the plea agreement.
3. On 4<sup>th</sup> September 2022 at around 8.30 a.m., the accused hurriedly entered the Report Desk at Mariguni Police Post. He casually informed *PC Alex Kibiro Maina* that "*nimemada shosho yangu*", some *Sheng* meaning he had killed his grandmother. It was a cruel truth: Moments earlier, he had gone to the house where 96-year-old *Esther Tono Ngati* (his grandmother and hereafter *the deceased*)

was sleeping, strangled her and then slit her throat with a knife (exhibit 5).

4. He then locked the house, placed the keys under a stone at the entrance and sped off to the Police Post. He told the police that he had started by strangling the deceased using his bare hands; and, that he was *“unaware of what he was doing”*. But that at some point, *“his senses came back and he asked for forgiveness from his grandmother who responded that she had forgiven him and then went silent”*. He then used the knife to slice of her neck and blood spilt all over the floor.
5. From the post mortem examination conducted on 8<sup>th</sup> September 2022, the cause of death was *“excess haemorrhage from neck injury as a result of sharp penetrating force trauma”*. I find that the autopsy report (exhibit 4) is consistent with the facts read out at the trial and admitted by the accused.
6. I am unable to comprehend what drove the accused to kill the deceased in such a horrifying manner. I say so because there was no history of animosity between him and his grandmother. Although he claimed *not* to have known what he was doing, the truth is that his faculties were intact. By pleading guilty under the plea agreement,

he has *waived* his right to a trial on that issue. Furthermore, he was found fit to plead as per the two medical reports dated 12<sup>th</sup> and 19<sup>th</sup> September 2022 (exhibits 2 & 3).

7. Learned prosecution counsel, *Ms. M. Kigira*, confirmed that the accused is a first offender. She however sought a deterrent custodial sentence taking into account the gruesome nature of the attack on an old defenceless woman and other aggravating circumstances.
8. There is then the elaborate and emotional *mitigation* tendered on behalf of the accused by his learned counsel, *Mr. Hamisi Mzari*. He regretted that the deceased was over 90 years and vulnerable. He submitted, however, that the accused is a young man of 27 and truly remorseful. Through collaboration between the Prisons and Justice Defenders, the accused has been a diligent paralegal. He has equally undergone rehabilitation and earned a certificate in entrepreneurship.
9. It was also submitted that owing to the poor and challenging environment in which he was brought up, it affected his mental health. Counsel thus prayed for clemency to enable the accused to rejoin the society and hopefully achieve his aspirations in life. In a

synopsis, it was a plea to temper justice with mercy through supervised probation.

10. I have then perused the *pre-sentencing report* dated 19<sup>th</sup> September 2025 under the hand of *Mr. Kiriga Kimani*, Probation Officer, Nairobi. He does *not* recommend probation. He concludes that *“given the lack of support from his mother and the maternal relatives, a non-custodial sentence is untenable”*.
11. On the other hand, is the victim’s family. The victim was the accused’s grandmother. She was living in Mariguini with the accused’s mother. The accused was staying with a friend not too far off from his mother’s house. According to his mother, the homicide has led her to depression. It has also *“strained relationships amongst the siblings and they rarely communicate. The psychological loss has deep and far reaching consequences and has caused immense suffering to all family members”*.
12. I have kept in mind that the accused is a first offender and now aged 27. I have weighed it against the gravity of the offence and the lasting impact on the victim’s family. The accused first strangled his helpless 96-year-old grandmother before slitting her throat using a sharp kitchen knife. This remains an *aggravating* factor.

13. Sentence *should be commensurate to the moral blameworthiness of the offender* but also guided by the *nature and gravity of crime*. Manslaughter is a grave felony and attracts a sentence of life imprisonment. Like I stated, the probation officer does *not* recommend a non-custodial sentence. Despite the spirited and highly emotional mitigation, I agree with the probation officer. I find that justice of the case demands a substantial custodial sentence. It will also afford the accused a further opportunity for therapy and meaningful reform.
14. I accordingly sentence the accused to serve *ten (10) years* in jail. In accordance with section 333 (2) of the **Criminal Procedure Code**, the sentence shall run from 4<sup>th</sup> September 2022, the date when he was first arrested and placed in custody.
15. The accused has a right of appeal to the Court of Appeal within 14 days and as per the Rules of that Court but *only* on the sentence. A copy of the proceedings and sentence shall be supplied to him immediately.

It is so ordered.

**DATED, SIGNED** and **DELIVERED** at **NAIROBI** this 21<sup>st</sup> day of October 2025.

**KANYI KIMONDO**

## **JUDGE**

### **Sentence read virtually on *Microsoft Teams* in the presence of-**

The accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Hamisi for the accused instructed by Hamisi Mzari Advocate.

Mr. E. Ombuna, Court Assistant.

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