



**Republic v Mwau (Criminal Case E015 of 2024)
[2025] KEHC 14483 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E015 OF 2024
TM MATHEKA, J
OCTOBER 9, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARY MWENDE MWAU ACCUSED

JUDGMENT

1. The accused Mary Mwende Mwau was charged with murder Contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on 9/6/2024 at Kauti Village, Kauti sublocation, Kilungu Subcounty Makueni County, she murdered Raphael Mutuku Kitivi, her brother.
2. She denied the charge on 9/7/2024
3. We heard 2 witnesses on 11/3/2025 then the court was told that parties were exploring a plea bargaining agreement pursuant to s. 137A of the Criminal Procedure Code which states inter alia;
137A. Plea agreement negotiation
 - (1) Subject to section 137B, a prosecutor and an accused person or his representative may negotiate and enter into an agreement in respect of—
 - (a) reduction of a charge to a lesser included offence;
 - (b) withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges.
4. On 3/7/2025, parties informed the court that they had negotiated a plea bargaining agreement and were ready for the recording of the same in accordance with Section 137 A of the Criminal Procedure Code. The charge of murder had been reduced to Manslaughter c/s 202 as read with s. 205 of the Penal Code.



1. I satisfied myself that the accused person understood the nature of the plea bargaining agreement by complying with s. 137F which states:.

Recording of plea agreement by court

- (1) Before the court records a plea agreement, the accused person shall be placed under oath and the court shall address the accused person personally in court, and shall inform the accused person of, and determine that the accused person understands—
 - i. The right to plead not guilty and already so pleaded persists in that plea.
 - ii. The right to be presumed innocent until proven guilty.
 - iii. The right to remain silent and not to testify during the pleadings.
 - iv. The right not to be compelled to give self –incriminating evidence.
 - v. The right to a full trial.
 - vi. The right to legal representation.
 - vii. The right to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain attendance and carry out examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution.
 - viii. The accused person understands that by accepting this plea agreement, he is waiving his right to a full trial and all the right to a full trial and all the rights in paragraph 5 herein above.
 - ix. that the accused person understands that the nature of the charge of Manslaughter and that whereas there is no minimum sentence, the maximum sentence is life imprisonment.
 - x. The accused person understands that by entering into this plea bargain agreement, is waiving his right to appeal except as to the extent of the sentence.

5. Having satisfied myself as above , the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code was read and explained to the accused, –where it was alleged that on 9/6/2024 at Kauti Village, Kauti Sublocaiton , Kauti Location, Kilungu Subcounty Makueni County she caused the unlawful death of Raphael Mutuku Kitivi.

6. The accused pleaded guilty to the charge. The facts were read to her –

- The deceased is brother of the accused. They were living together at home. On 3/6/2024 – you and your brother cut trees to make charcoal. You took charcoal to market – it is not clear how you shared proceeds. You went home, left him and market. About 10:00pm – you were in your house; Raphael came and began to knock on your door. You did not want to open- Raphael forced the door – hit the door until it fell in. You were afraid that he has about to attack you. You were resisting his opening the door. He entered by force, you took an axe, hit him on the head – he fell at the door. Upon him falling you went out to an unknown place – leaving him there . He was bleeding, he became unconscious. Your mother Peninnah heard – she found your brother there – she called neighbours, the assistant chief came, police were called. Your brother died. Police came, took the body, took photos postmortem was done –after body was taken to mortuary the cause of death was severe head injury secondary to blunt force trauma. The axe was recovered in your house - Pexh. 1&2 respectively. On 10/6/2024 at



11:00am, you were arrested – along Nunguni Market road near Kilungu Subcounty hospital – you said you were on your way to DCI – offices to present yourself. Postmortem – dated 21/6/2024 Pexh. 1(the axe is not in court). You were charged with murder, which was reduced to manslaughter upon the plea bargain agreement.

Accused: Ni maw'o (maelezo in ya ukweli)

5. She pleaded guilty to the facts. She was convicted on her own plea of guilt.
6. The prosecution submitted that she is 1st offender. The prosecution proposed a non-custodial sentence of 3 years - the defence, a non-custodial sentence of 1 year.
 - a. In her mitigation it was submitted that the accused is 1st time offender. The incident occurred while she was acting in self defence - she was repelling the attacker. Did not intend to kill. She is a 53-year-old, mother of 2 children, she is remorseful. I pray for leniency from court, suffer from epilepsy one time fell into a fire, lost her fingers, she is hard working – does not allow her disability hinder her from fulfilling her responsibility, The Probation report is positive . She has never been in conflict with the law - she prays for noncustodial sentence- has been in custody for 1 year - she has been rehabilitated – prays for 2nd chance in life. Chance to integrate back in society.
7. I sought a pre-sentence report which I have considered. The report concludes;

“ The offender lives with disability and suffers from epilepsy and at one time sustained severe burns on her hands after falling into fire during an episode. The offender’s family described the offender as a responsible individual, hardworking and excessive abuser of alcohol. The offender’s mother spoke highly of her in terms of being reliable and being responsible towards her.

The offender’s mother (Philomena Wayua) , offender’s brother (Joseph Musyoki), offender’s paternal uncle who is also village elder(Raymond Muteti) expressed willingness to be involved in the offender’s rehabilitation in case the honourable court places him on a non-custodial sentence... in case the offender is placed on a non-custodial sentence, she will be closely monitored through regular reporting and acquire guidance and counseling on drugs and substance abuse and conflict management resolution.

Our office will link her with the department of persons living with disability for necessary support and services. Our office and the Kauti Local Administration will collaborate on monitoring and supervision and conduct quarterly case conferencing with the family members on review of supervision progress.”
8. A 3year probation supervision order is recommended.
9. The only issue for determination is what is the appropriate sentence?
10. The accused and the deceased were siblings. They appear to have had some quarrels - and it is not clear whether the deceased had the habit of attacking the accused. What emerges is that when the accused broke down her door she picked the nearest thing that turned out to be an axe and hit him with it.
11. It caught him on the forehead and he died on spot. The postmortem shows that she hit him once- and that is the injury that led to his death – as it caused – a severe head injury (closed fracture of the skull, massive subdural hematoma from occipital to frontal region



12. It would support her position that she was striking out to ward off the intruder who had broken down her door. This was an unfortunate event that could have been prevented. The family and community are ready to receive her back in the community to enable reconciliation, restitution of family ties.
13. She has been in custody since 3/7/2024 - and I would consider that sufficient custodial punishment.
14. Regarding the non-custodial sentence I sentence her to probation supervision for 3 years with effect from date of this order during which period Probation & Aftercare services Makeni will enforce the recommendations in their report.
15. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 9TH OCTOBER 2025

MUMBUA T MATHEKA

JUDGE

Accused - present

Mr. Kazungu – for state

Mr. Hassan -for the accused

Chrispol - Court Assistant/Interpreter

