



**Republic v Soita & another (Criminal Case 38 of 2016)
[2025] KEHC 15515 (KLR) (31 October 2025) (Sentence)**

Neutral citation: [2025] KEHC 15515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 38 OF 2016
JRA WANANDA, J
OCTOBER 31, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

EDWIN NYONGESA SOITA 1ST ACCUSED

PRISCAH NANJALA ALIAS EVERLYNE 2ND ACCUSED

SENTENCE

1. The accused persons, a mother and her son, were charged, jointly, with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 10/05/2016 at Jerusalem village in Mbaraka sub-location in Lugari District within Kakamega County, they murdered one Gregory Augo. By the Judgment rendered by this Court on 25/04/2025, both Accused persons were convicted of the offence of murder. This Ruling is now in respect to sentence.
2. Regarding sentencing, Prosecution Counsel Mr. Okaka submitted that while there is no previous criminal history for the Accused persons, he asked the Court to note that the assault was by more than one person, and against a helpless victim
3. Mr. Mathai, Counsel for the accused persons, in the mitigation he made on their behalf, urged that the accused persons are remorseful, they regret their actions and now appreciate that violence regardless of the provocation, is not an end to settlement of disputes. He submitted that although the accused persons have been out on bond, the matter has taken a long time and it has taken a toll on them, and that the Accused persons have, since then, engaged in community building endeavours. He urged further that there are no aggravating facts as the offence was a result of a fight, and the accused persons had no intention to kill. He thus prayed for leniency, and also pointed out that the victim’s family has not come forward to give a Victim Assessment Report. In the end, he proposed a prison sentence of not more than 15 years.



4. I directed that respective pre-sentence Reports be filed in respect to the accused persons, which was done. The Reports, both dated 5/06/2025, and prepared by the Probation Office under the State Department for Correctional Facilities, state that the 1st accused is currently 30 years old, and the 2nd accused (his mother) is a 69 years old grandmother and. The Reports then reiterate the position that the accused persons killed the deceased in self-defence but also pointed out that the community around Pan Paper in Mautuma Location where the matter was committed appreciates the seriousness of the matter and expects that the Court will do justice, that the local authorities highlighted the destruction of property and threat of violence directed towards the accused persons after the incident and their immediate family, as having been indicative of the community's anger, and that the violence led to their relocation. The Reports thus doubted whether the accused persons will be welcomed back to the community even if given the opportunity. However, regarding the community in Sango in Kongoni Location where the accused persons settled in, the Reports observe that, following the release of the accused persons on bond, that community spoke in favour of leniency in sentencing.
5. The applicable law on sentence for the offence of murder is Section 204 of the Penal Code which provides as follows:

“ Any person convicted of murder shall be sentenced to death.”
6. It is now however, generally agreed that in spite of the mandatory language employed by the statute, the Courts nonetheless still retain discretion in sentencing. It is on this basis that in the case of Francis Karioko Muruatetu & Another v Republic [2017] eKLR, the Supreme Court declared the mandatory death sentence unconstitutional insofar as it also does not allow for consideration of mitigation. This is how the Supreme Court put it:

“(66) It is not in dispute that article 26(3) of *the Constitution* permits the deprivation of life within the confines of the law. We are unconvinced that the wording of that article permits the mandatory death sentence. The pronouncement of a death sentence upon conviction is therefore permissible only if there has been a fair trial, which is a non-derogable right. A fair hearing as enshrined in article 50(1) of *the Constitution* must be read to mean a hearing of both sides. A murder convict whose mitigation circumstances cannot be taken into account due to the mandatory nature of the death sentence cannot be said to have been accorded a fair hearing.”
7. Regarding sentence itself, the Supreme Court, in the same case of Francis Karioko Muruatetu & Another (supra), guided that the following mitigating factors would be applicable; (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; and (h) any other factor that the Court considers relevant.
8. Similarly, in the case of Daniel Kipkosgei Letting v Republic [2021] eKLR, the Court of Appeal held as follows;

“ we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end



of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to.”

9. I also cite Majanja J, in the case of Michael Kathewa Laichena & another v Republic [2018] eKLR, in which, quoting the Muruatetu case (supra), he stated that:

“The Sentencing Policy Guidelines, 2016 (“the Guidelines”) published by the Kenya Judiciary provide a four tier methodology for determination of a custodial sentence. The starting point is establishing the custodial sentence under the applicable statute. Second, consider the mitigating circumstances or circumstances that would lessen the term of the custodial sentence. Third, aggravating circumstances that will go to increase the sentence. Fourth, weigh both aggravating and mitigating circumstances.”

10. Applying the guidelines set out above, and keeping in mind the object and purposes of the Judiciary Sentencing Policy and Guidelines, I have taken into account the fact that the accused persons were first offenders, and also that the Probation Officer’s pre-sentence Reports suggests that the accused persons, have by their conduct, demonstrated a lot of remorse for the incident, and have since then lived exemplary lives to the satisfaction of the community. As aforesaid, the 2nd accused and the 1st accused are son and mother, and the 2nd accused is of the advanced age of almost 70 years old, and a grandmother reported in the Probation Report as taking care of several grandchildren said to be orphans. The 1st accused, on his part is a 30 years old man, thus in the prime age of his life. These are no doubt mitigating circumstances.
11. It is however clear that the fight that eventually led to the killing of the deceased was initially only between the 1st accused and the deceased. The reason for the fight is not clear but appears to have been a case of a love triangle involving the accused and the deceased. Whatever the reason for the fight, the 2nd accused, instead of acting as the voice of reason and admonish her son for the senseless attack on the deceased, joined in to assist her son (1st accused), and together, they inflicted on the deceased the injuries that led to his death.
12. As I noted in the Judgment, the element of “malice aforethought” is easily inferred from the nature of the weapons used – a hoe, in conjunction with a big stick or log, and also from a consideration of the parts of the body targeted – head, neck and stomach. As I held, the accused persons aimed their blows at such sensitive and vulnerable areas of the body and clearly knew, or ought to have known, that hitting a human being repeatedly with the kind of blunt weapons they used, on the head, stomach and/or neck could lead to the death of the person or at the least, cause him grievous bodily harm. As further observed in the Judgment, it was clearly the intention of the accused persons to cause maximum injuries on the deceased since inflicting of the repeated blows by both of them in unison, simultaneously, was completely unnecessary and excessive use of force in the circumstances. The deceased was a 19 years secondary school student, and according to the Reports, his parents are still bitter about the senseless killing, particularly because the accused persons have not shown any remorse and have never taken any steps to at least reach out to him and offer apologies. I find these to be aggravating circumstances.
13. I thus agree with the Prosecution that although the accused persons were first offenders and may appear to be remorseful, through their senseless actions, a life was lost and the Court must reiterate that it is not acceptable for one citizen to take the life of another whatever the circumstances. The Court must therefore render justice. I however consider the advanced age of the 2nd accused, and also the fact that she simply joined a fight she was not initially part of. Her involvement was evidently lesser than that by the 1st accused who was clearly the main perpetrator.



Final Orders

14. Having considered all the relevant principles and circumstances, I impose sentence as follows:

- i. The 1st accused, Edwin Nyongesa Soita, is hereby sentenced to serve fifteen (15) years imprisonment, save that the period he spent in remand custody between the date he took plea, 19/05/2016, and the date he was released on bond, 12/11/2018, and also the period between conviction, 25/04/2025, and sentence, 31/10/2025, shall be deducted from computation of the prison term to be served, in accordance with Section 333(2) of the Criminal Procedure Code.
- ii. The 2nd accused, Prisca Nanjala alias Everlyne, is hereby sentenced to serve ten (10) years imprisonment, save that the period she spent in remand custody between the date she took plea, 19/05/2016, and the date she was released on bond, 18/01/2017, and also the period between conviction, 25/04/2025, and sentence, 31/10/2025, shall be deducted from computation of the prison term to be served, in accordance with Section 333(2) of the Criminal Procedure Code.
- iii. Right of appeal within 14 days is hereby explained to the accused persons.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 31ST DAY OF OCTOBER 2025

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Both Accused persons present in open Court

Mr. Mathai for both Accused persons

Ms. Mureithi for the State

Court Assistant: Brian Kimathi

