



REPUBLIC OF KENYA



**Republic v Wambua (Criminal Case E005 of 2020)
[2025] KEHC 15613 (KLR) (15 October 2025) (Sentence)**

Neutral citation: [2025] KEHC 15613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E005 OF 2020
TM MATHEKA, J
OCTOBER 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHNSTONE MUSEMBI WAMBUA ACCUSED

SENTENCE

1. Johnstone Musembi Wambua was charged with murder contrary to section 203 as read with section 204 of the Penal Code. That on 25/10/2020 at Makutano Village Nthongeni Location, Kibwezi East Subcounty he murdered Jackqueline Mueni Musau.
2. After a full trial the accused was found to have a case to answer. During his defence on oath he admitted to killing his wife out of provocation. He testified that at the time of arrest he had told the investigating officer the same thing. The offender was found guilty, convicted on the charge of murder contrary to section 203 as read with section 204 of the Penal Code.
3. At this juncture the only issue for determination is what is the sentence appropriate in this matter.
4. Section 204 of the Penal Code Provides for the death sentence although courts have over time created jurisprudence where the mandatory nature of the sentence was removed and courts left which discretion to determine the sentence in accordance with the circumstance of the offence, the offender, and the public interest – taking into consideration the views of the victim.
5. From the Probation & After Case Services report the offender is 41 years, was married to the deceased and they had 4 children, currently in Form 4 , Technical Training Institute, Grade 8 and 4 respectively.
6. His attitude to the offence is captured in the report thus;

During the interview, the offender expressed remorseful attitude towards the offence and prayed for this honourable court's leniency pleading on grounds that he is the sole



provider to his younger family. He pleads for a lenient sentence mainly non-custodial while promising to uphold good behavior. During the interview, the offender regretted the incident, accepting responsibility for the offence. Being a first-time offender, he cited that this incident has made him reflect on positive behavioral conduct.

7. It is stated further the problem between him and his wife was lack of conflict resolution skills, anger when his wife responded rudely to him – leading him to cut her with the panga he had.
8. It is also indicated that the clans of the 2 families sat down and forgave each other, and that the family of the victim accepted the reconciliation. I did not see the document of the alleged reconciliation however - it is evident that no one thought about the children and what they were going through. The moment their mother was killed by their father, they became children in need of care and protection. DCI officers, ODPP at the time of opening the murder file ought to have opened a Protection and care file, placed it before the children court, for the court to give directions on the safeguards to the rights and welfare of the said children.
9. The fact that was not done has left them with psychological wounds as evidenced by the probation officer's report.
10. The *Children Act* 2001 and the *Children Act* 2022- both have provisions on the categories of children in need of care and protection and what ought to be done to safeguard their right and welfare. In this case, there is no evidence to show that the children were involved in the reconciliation process to enable them to heal. They are the victims of the offence as they lost their mother- in death, and their father - to criminal justice system.
11. The Probation &Aftercare Service officer states,

From the above social report, I am of the view that the offender who can be corrected through the following intervention measures to his behavioral management. Be supervised and closely monitored through regular reporting to avoid bad companies who may influence him in bad behaviors. To be counseled and advised on proper anger management and conflict resolution skills. Be supervised and support him and engage him regularly with a view to overcome the guilt he holds over the incident. To be counseled against alcohol, drugs and other substance abuse. Quarterly case conferencing with the family members and local administration to discuss and review his supervision progress.
12. The Probation Aftercare Service officer recommends

His family and the victim's family forgive him and are willing to give him second chance. In view of the above my lady, the offender is found suitable for non-custodial sentence namely probation order. I therefore suggest that the offender be considered for three- years' probation order for proper supervision, monitoring and rehabilitation. While on probation he will be able to receive guidance and counseling that will help him reform. However, this is subject to the final verdict by the court.
13. The above recommendations in my view while good appear out of sync with the facts and circumstances of this case
14. For instance the victim's family reported here are the relatives of the deceased. It is evident from the report that the PACs officer did not speak to the children to know how they felt about the issue – yet, as I have stated herein above they are the true victims of this crime.



15. The SPGs 2023 at para 5.2.2 state that;
- “The harm caused by such an offence is immeasurable. The sentence is not a measure of the value placed on the life of the victim...the assessment of the aggravating & mitigating factors focuses on culpability”
16. Para 5.2.4 provides for the aggravating factors which includes –Planning /pre meditationMental/ physical suffering on the victims.In this case the victim had multiple deep cuts- left forearm, elbow cutting radial bone, right forearm, deep cut wound separating thumb, index, mid fingers deep cut wound on right temporal bone exposing brain matter, compound fracture of the occiput exposing brain matter.This was not one panga cut as insinuated by the PACs officer in the PSR – there were several panga cuts and the cuts on the arms a demonstration of someone who was trying to shield (defend) herself - after those were cut, her head was cut twice – the front and the back so much force must have been used to cut through bones.The deceased must have suffered a lot of pain.This was not a case of self defence as the deceased was not armed.
17. Even the degree of provocation – alleged – that bricks were missing- rude response – then offender used all this force because of that?
18. On mitigating factors In the Francis Karioko Muruatetu case the following factors were set down as a guide to mitigation for resentence hearing for murder convicts sentenced to death.
1. age of the offender;
 2. being a first offender;
 3. whether the offender pleaded guilty;
 4. character and record of the offender;
 5. commission of the offence in response to gender-based violence;
 6. remorsefulness of the offender;
 7. the possibility of reform and social re-adaptation of the offender;
 8. any other factor that the court considered relevant.
19. In this case the offender states that he is remorseful. He is not young, it is his first offence . His plea of guilt came at the end after almost five years .
20. I have taken into account all the mitigating factors in this case.
21. What sentence ?
22. In R Vs Gina & Another [2014] KEHC 7874(KLR) the court meted 30 years imprisonment ;John Komu & 2 others V R [2021] eKLR Nelson Mwitikunda & 2 others V R [2018] eKLR- the court gave 30 years imprisonment and in Cox V Republic [2015] KECA 1488(KLR) which was similar to this the court gave 35 years imprisonment.
23. Having looked at the foregoing authorities I consider that a sentence of 35 years imprisonment would suffice.
24. Taking into account of the time spent in custody as required by s. 333(2) of the Criminal Procedure Code, the offender is sentenced to 35 years imprisonment to run from the date of arrest.



25. Right of Appeal Explained

DATED, SIGNED AND DELIVERED THIS 15TH DAY OF OCTOBER 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Kazungu for State

Mr. Hassan for the accused

