



**Republic v Muigai (Criminal Case E032 of 2023)  
[2025] KEHC 15955 (KLR) (4 November 2025) (Sentence)**

Neutral citation: [2025] KEHC 15955 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE E032 OF 2023  
RN NYAKUNDI, J  
NOVEMBER 4, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MAXWELL MAINA MUIGAI ..... ACCUSED**

**SENTENCE**

1. Maxwell Maina Muigai faced a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 28<sup>th</sup> day of November, 2023 at around 1010hrs at Eldoret Railways Police line B, Soy Sub-County within Uasin Gishu County, in the Republic of Kenya murdered one Mercy Chebet.
2. The charge was however reduced to manslaughter as per the plea agreement dated 6<sup>th</sup> August, 2025. The court accepted the accused's guilty plea to the charge of manslaughter after certifying that the Plea Bargain Agreement conformed with the provisions of Section 137A-O of the Criminal Procedure Code. The court was further satisfied with the factual basis of the case and the accused's competence to enter into the plea bargain agreement.
3. The accused person was under the leadership of Mr. Onkangi whereas the prosecution was steered by Ms. Kirenge Sidi.
4. Learned Counsel in mitigating on behalf of the accused person stated that the accused person is a first offender and he is remorseful for the offence. According to counsel, the accused person regrets the offence and he never intended to kill the deceased. It is further indicated that the accused person left young children who need his presence now that the mother is deceased. For the above given reasons, counsel pleaded on behalf of the accused for leniency and urged the court to impose a non-custodial sentence.



5. The prosecution on the other hand in their report highlighted that the accused person understands that the sentence is within the sole discretion of the Presiding judge. Counsel proposed that a custodial sentence of five years would be appropriate given the circumstances of the case.
6. The lesser charge in question is punishable by a maximum sentence of life imprisonment under section 205 of the penal code. The sentence is however reserved for serious cases. In the Plea bargain agreement, the prosecution proposed a sentence of not more than five years whereas the accused person through counsel suggested a non-custodial sentence.
7. 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.
8. Additionally, in the "Muruatetu Case", the Supreme Court outlined the following guidelines as being applicable when the Court is giving consideration to 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.”
9. The circumstances resulting to the unfortunate circumstances are that on the 28<sup>th</sup> day of November 2023 at around 1930 Hours, the Accused being a Police Constable stationed at Eldoret Railways Police Station went to the station armory and was issued a rifle by SGT Jakait being Rifle Scorpion Serial Number B285793, the receipt of which was documented in the Arms Movement Book. He thereafter left for home upon which he found the door locked from inside. The Accused called out to his wife,



the Deceased, to open for him but she didn't respond and therefore didn't open despite him asking severally.

10. The Accused sought the help of their next-door neighbor, Rebecca Kipchumba (PW 3), and asked her to ask his wife to open the door for him so that he could enter the house, change and go for his duties. PW3 called out to the Deceased severally but she declined. After several attempts to knock and pleading with the Deceased to open, the Accused asked PW3 to move aside so that he could hit the door using the handle side of the gun. It was at this point that the gun discharged some rounds of ammunition and the Accused ended up tilting the gun towards the direction of the door and the bullets penetrated through the door. PW3 asked the Accused not to hit the door again. They both broke the door and found the Deceased lying on the floor, dead, with visible wounds on the chest. The Accused asked PW3 to go get help and she went and locked herself briefly inside another house where she called CI Moses Juma, the OCS of Eldoret Railways Police Station to report the incident.
11. The Accused on his own volition decided to personally report the matter to the OCS and by so doing, went to the Station's Report Office, placed his rifle on the counter, sat on a chair and fell asleep. He was thereafter placed in the cells as the main suspect of this offence and the gun held as an exhibit after safety precautions were conducted. That out of the 21 rounds that were issued to the Accused, 3 rounds of ammunition were missing.
12. Officers from the Railways Police Station went to the crime scene where they found the Deceased lying on the floor and blood flowing on the floor of the house. The scenes of crime officers were called to process the scene resulting in the photographs and certificate as to photographic print tendered as Exhibit 8. Later, Officers who came from DCI Soy Sub County also recovered 2 cartridges (Exhibit 4) and 2 bullet heads (Exhibit 5) which they handed to the ballistic expert for examination as per the exhibit memo form (Exhibit 6A). In the Ballistics Report (Exhibit 6B), the analyst explained that he was given 18 rounds of ammunition (Exhibit 3) from which he picked 3 that he successfully fired from the Scorpion Gun. Test firing was also done on the cartridges and the bullets and it was found that the 2 expended cartridges were fired in one gun and that the 2 fired bullets were fired from the Scorpion gun issued to the Accused (Exhibit 1).
13. The body of the Deceased person was moved to Moi Teaching and Referral Hospital and on the 1<sup>st</sup> December 2023, a post mortem was conducted showing that the Deceased died as a result of a hypovolemic gunshot wound due to penetrating gun shout wound.
14. The applicable law on sentencing for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;  

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”
15. One of the benefits that accrues to an accused person who surrenders arms by pleading guilty is a reduced sentence. To this end, at section 137 (2) & (3) of the Criminal Procedure Code it is provides that:  

“(2) In passing a sentence, the court shall take into account—

  - a. The period during which the accused person has been in custody;
  - b. A victim impact statement, if any, made in accordance with section 329C;



- c. The stage in the proceedings at which the accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given;
- d. The nature and amount of any restitution or compensation agreed to be made by the accused person.

(3) Where necessary and desirable, the court may in passing a sentence, take into account a probation officer's report.”

16. In considering the mitigating factors advanced by the defense, the court notes that while the accused person is indeed a first offender who has shown remorse and pleaded guilty through a plea bargain agreement, the court must balance these factors against the gravity of the offence and the aggravating circumstances. The defense counsel has urged the court to consider that the accused left young children who need his presence now that their mother is deceased. However, this court finds that the fact of having dependant children cannot, in itself, be a sufficient mitigating factor to warrant a non-custodial sentence in a case where a life has been lost. Indeed, the deceased also had the same children who now lack their mother's care and presence as a result of the accused's actions. To give undue weight to this factor would be to ignore the permanent loss suffered by the children and the deceased's family.
17. The court must further consider the aggravating circumstances of this case. The accused person was a police constable who was entrusted with a firearm for the purpose of maintaining law and order. The misuse of a state-issued firearm in a domestic setting represents a grave breach of trust and demonstrates a serious lapse in judgment. This reckless conduct resulted in the death of the deceased who suffered visible chest wounds. Additionally, the court notes that domestic violence, particularly involving firearms, must be denounced in the strongest terms. The community expects that police officers, who are custodians of firearms, will exercise the highest standards of discipline and responsibility in handling such weapons. The circumstances of this case demonstrate a catastrophic failure in this regard.
18. This court has taken into account the submissions by the member of the victim family being the deceased and the wife to the accused person including the probation officers report and mitigation offered by learned counsel Mr. Onkangi on behalf of the accused, There are several factors in this case which negate the principle of mercy and compassion to tilt the scale from the legislative scheme of the prescribed penalty of life sentence and have it departed from to a lesser offence of non-custodial sentence under probation supervisory. First and foremost is the gravity of the crime in question involving the use of Lethal weapon in the characteristics of a firearm fully loaded with ammunitions issued to the accused as a police officer of this republic to safeguard the lives of Kenyans including that of his own family. It is not in dispute that the Mudder weapon being the firearm and ammunitions were legally issued to the accused persons as a State Officer. It was never meant to be a weapon manipulated to kill his own wife on the 20.11.2023. The use of force against the victim was excessive and cannot be said to be squarely within the provisions under Section 17 on self defense and Sections 207 & 208 of the penal code on provocation. The responsibility that will be attributed to the accused to the offence in question becomes an aggravating factor. The victim in this case, as a wife must have looked up to the accused person for security, safety and all those rights under Article 26 of *the constitution* on the right to life.
19. When it comes to assessment of aggravating and mitigating factors in exercising discretion in one way or another, a court is not bound to give consideration to mitigation factors. It has a discretion to ignore facts in mitigation when the gravity of the crime or other relevant factors outweigh the individual



circumstances of the offender. In this case I have been told that the accused regrets the offence and is remorseful even to the family of the deceased but what has not been answered is whether this death was avoidable. When an offence of homicide results in fatal injuries its imperative for the court to consider the nature and extent of such injuries before awarding sentence. That inherent gravity must be assessed within the parameters of intention and feasibility. In my view, one criteria in deciding whether a case of manslaughter calls for a substantial sentence is for the court to ask itself whether if the injuries inflicted in all circumstances could have been avoided by the accused or the offender. The answer to this question is in the affirmative that the accused person had all the means within his power to exercise restraint in using a firearm against his own family.

20. The sentencing regime must not shy away from taking into account the provisions of Article 27 of *the constitution* on equality before the law and non-discrimination. Equality before the law and the independence of the judiciary is the foundation of the rule of law. In Kenya Section 82 (2) of *the constitution* which is the supreme law of the land provides that no person shall be treated in a discriminatory manner by any person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. So the question is, what are the compelling circumstantial and substantial circumstances to warrant a non-custodial sentence. According to submissions, the accused regrets the offence which apology was also shared with the victim's family. The other factor of significance fell within the issues that the victim cannot be brought back to life and therefore it will be more worthwhile to release the accused person to go and look after his family. These metrics in all circumstances if applied would be in violation of Article 27 of *the constitution* on the right to equality before the law and non-discrimination.
21. This principle of equality is echoed in the law of sentencing which is founded on the principle that, other things being equal, crimes of equal gravity deserves sentences of similar severity. If any differentiation is to be made between two accused convicted of the same crime, it must be done on the basis of factors which are recognized as legally relevant for differentiation. That is why any difference in the sentence awarded should be fully justified by the particular circumstances of a case and the reasons for such discrepancy should be fully set out. In other words, equal criminals should be treated equally. In doing so courts will avoid arbitrariness will facilitate rationalization, uniformity and consistency making review by appellate court easier.
22. During the sentencing hearing I was strongly invited by the victim family and learned counsel Mr. Onkangi for the accused to look at this case as an exception and invoke the doctrine of mercy to impose a non-custodial sentence. The answer to these submissions is to be found in the extract by learned Author EL Muller, *The virtue of Mercy in Criminal Sentencing* (1993) 24 Seton Hall LR 288, 302-3 in which he observed as follows: " That the sentencer who is considering mercy as having two choices. He can impose the just sentence, or he can impose a sentence more lenient than the just one... Is Murphy describing something real? And is he describing a system that a good Kantian would recognize as genuinely retributivist? Murphy has chosen to build his theory of Mercy on an either/or sentencing scenario, either the judge imposes a harsher sentence (the just one) or he imposes a more lenient sentence. This is simply not an accurate model of the overwhelming majority of sentencing decisions that sentence are called upon to make... Rather in most cases, the sentencer's task is to choose a sentence from within a continuum of authorized punishments. Mercy may not only affect the weight to be given to the various accepted mitigating circumstances, it also is also reflected in the principle of "totality"
23. The other aspect of this case is on the doctrine of proportionality in sentencing which involves balancing the gravity of the crime and the offenders culpability against the punishment imposed by



the trial court. Proportionality a fluid concept in sentencing must be contextualized on a case to case basis and also factoring in society of values to ensure fair and proportionate sentence for each offender.

24. The court has carefully considered the jurisprudence on sentencing for manslaughter offences where the accused has pleaded guilty. While consistency in sentencing is important, each case must be determined on its own facts and circumstances.
25. Taking into account all the circumstances of this case, the objectives of sentencing, and the need to balance the interests of justice with the possibility of rehabilitation, this court finds that a custodial sentence is inevitable and appropriate. However, in recognition of the accused's guilty plea, cooperation, and remorse, the court declines to impose the maximum sentence of life imprisonment.
26. Accordingly, the accused person, Maxwell Maina MuigaI, is hereby sentenced to Fifteen (15) years imprisonment with effect from 20.12.2023 being the date he was arraigned in court by the Director of Public Prosecution and no reasons have been given for the delay in prosecuting the case which had only Eight (8) witnesses who were summoned by the National Police Service to record the statements which formed the core of the prosecution.
27. The accused has a right to appeal against this sentence within fourteen (14) days
28. It is so ordered.

**DATED AND SIGNED AT ELDORET THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

In the Presence:

Mr. Onkangi, Advocate for the accused

Ms. Sidi Kirenge, Prosecution Counsel

The accused person

