EWM v Republic (Criminal Appeal E008 of 2023)
[2026] KECA 9 (KLR) (16 January 2026) (Judgment)

Neutral citation: [2026] KECA 9 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL E008 OF 2023

MA WARSAME, JM MATIVO & PM GACHOKA, JJA

JANUARY 16, 2026

BETWEEN

EWM ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the sentence from High Court of Kenya at Nakuru (W. Ouko, J.) dated 23rd September 2011 in HCCCR. No. 97 of 2009)

JUDGMENT

1. EWM, (the appellant) was charged, tried and convicted in Nakuru High Court Criminal Case No. 97 of 2009 for the offence of murder contrary to section 203 as read with section 204 of the Penal Code and sentenced to life imprisonment on 23rd September 2011. The appellant's appeal before this Court is only against the sentence. In her amended memorandum of appeal dated 16th June 2025, the appellant contends that the sentence imposed is manifestly harsh and excessive.

2. The particulars of the offence were that on 13th November 2009 at [Particulars Withheld], Mau Narok Division of Njoro, the appellant murdered, by canning to death her five (5) year old sister (RM) who had been left in her care after PW4 SNM returned to her mother's home with her two children after her marriage failed.

3. When this appeal came up for hearing on 9th December 2025, the appellant was represented by learned counsel Ms. Mwango, while Senior Assistant Director of Public Prosecutions, Mr. Omutelema, appeared for the respondent. Both counsels opted to rely on their written submissions which were already filed.

4. In her submissions dated 16th June 2025, Ms. Mwango argued that this Court can interfere with a sentence that is excessive and unreasonable. Counsel referred to the holding in George Onyango Kisera

& Another vs. Republic [2019] eKLR to buttress her argument that 50 years imprisonment is excessive and unreasonable in the circumstances of this case. Counsel additionally contended that the trial court did not mention the mitigating factors in the sentencing proceedings, despite the appellant's mitigation. Ms. Mwango cited the sentencing guidelines set by the Supreme Court in Francis Karioko Muruatetu & Another vs. Republic [2017] KESC (KLR) and urged this Court to consider that the appellant has spent over 15 years in prison, she is now rehabilitated through prison training, she is remorseful and has the potential to reintegrate into society. Therefore, a sentence that ignores the appellant's mitigation would be unjust and in violation of *the Constitution*. Ultimately, Ms. Mwango urged that the sentence be set aside and substituted with a shorter prison term or a non-custodial sentence given the appellant's expressed remorse, readiness for rehabilitation, and his desire to be reintegrated into society.

5. The respondent's Counsel Mr. Omutelema filed written submissions, a case digest and a list of authorities all dated 23rd June 2025. Mr. Omutelema, maintained that the sentence of life imprisonment for murder could not be said to be manifestly harsh and excessive since under section 204 of the Penal Code, the statutory maximum sentence is death. He relied on the case of Benard Kimani Gacheru vs. Republic [2002] eKLR to illustrate the circumstances under which an appellate court can interfere with a sentence and he reiterated that the sentence was arrived at after the trial court considered the appellant's mitigation and aggravating factors of the case.

6. In conclusion, Mr. Omutelema maintained that this appeal ought to be dismissed since the learned judge exercised his discretion and judiciously acted on the right principles and considered all material factors and therefore the sentence cannot be deemed to be unconstitutional.

7. We have addressed our minds to the record, the submissions, and the authorities cited by counsel for the parties. As an Appellate Court, we are expected to defer to the sentencing discretion of the trial court and only interfere where the sentence is manifestly excessive or where the trial court overlooked some material factor or considered some wrong material, or acted on a wrong principle. These principles were restated in Bernad Kimani Gacheru vs. Republic [supra] as follows:

> " It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

8. We have considered the appellant's submission that the sentence of life imprisonment is harsh and excessive. It is noteworthy that the maximum sentence for the offence of murder is death. The learned judge, in his discretion, sentenced the appellant to life imprisonment.

9. The Supreme Court of India in State of M.P. vs. Bablu Natt [2009] 2 S.C.C 272 Para 13 stated that 'the principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with.' Moreover, in Alister Anthony Pareira vs. State of Maharashtra, [2012] 2 S.C.C 648 Para 69 the court stated:

> " Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence

commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the of the offence and all other attendant circumstances."

10. We have considered the manner in which the offence was committed, the aggravating factors and weighed them against the extenuating factors in the case. The deceased was aged 5 years. Her mother had left the deceased and her other siblings under the care of the appellant. The prosecution evidence from eye witnesses was that the appellant brutally beat the deceased telling her that she would beat her until she dies and leave her at the door step. After brutally beating her, the appellant took the deceased behind the house, put a chameleon on her body and continued to brutally beat her. The appellant then took the deceased back to the house and continued beating her using a stick which had a nail, thus, inflicting serious injuries on her body. After the deceased became weak, the appellant took her back to the house, washed her and put her on the bed. In mitigation, the appellant's advocate stated that the appellant was remorseful, a single mother of two, aged 7 years and 1 year and 2 months, and her children's father had deserted her.

    Further, the appellant's mother was old and sickly and sought leniency and a non-custodial sentence. Upon carefully considering the mitigation the learned judge sentenced the appellant to life imprisonment. The foregoing passage clearly demonstrates that the trial judge paid regard to the plea in mitigation and exercised his discretion in arriving at the sentence. We note that the appellant was a first offender and she pleaded for leniency, citing her single motherhood. However, the trial court considered the gravity of the offence, the vulnerability of the deceased and the intensity of the attack in imposing the sentence. Notably, the trial Judge (Ouko, J. (as he then was) in the ruling on sentence dated 11th October 2011 considered the appellant's mitigation and noted that the deceased was an innocent child who was brutally and repeatedly attacked until she died and sentenced the appellant to serve life imprisonment.

11. It is clear the learned judge carefully considered the appellant's mitigation. The learned judge also considered the deceased's tender age and the manner in which the offence was brutally executed to a defenseless 5 year old child. It is also important to mention that the deceased's mother had trusted the safety of the deceased and her other minor children to the appellant, only for the appellant to turn against the deceased and brutally terminate her life. Taking into consideration the circumstances of this case, we find no reason to fault the sentence imposed by the learned judge. Accordingly, this appeal is devoid of merit and is hereby dismissed in its entirety.

DATED AND DELIVERED AT NAKURU THIS 16TH DAY OF JANUARY, 2026.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR.