



REPUBLIC OF KENYA



**Mganda v Republic (Criminal Revision E021 of 2025)  
[2026] KEHC 729 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 729 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E021 OF 2025  
AN ONGERI, J  
JANUARY 23, 2026**

**BETWEEN**

**DONCIA WAKESHO MGANDA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Doncia Wakesho Mganda was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code alongside two others namely Vincent Maghanga Mwasighwa And Richard Nyambu Mwandoe. The Applicant in this case, Doncia Wakesho was the 3<sup>rd</sup> Accused at the trial.
2. The 1<sup>st</sup> and 3<sup>rd</sup> Accused (the Applicant in this case) were convicted and sentenced to death on 22<sup>nd</sup> June 2017. The 2<sup>nd</sup> Accused person was acquitted.
3. The Applicant in this case did not appeal to the Court of Appeal. The Co-Accused Vincent Maghanga Mwasighwa who was the 1<sup>st</sup> Accused appealed to the Court of Appeal and the appeal was dismissed on 4<sup>th</sup> March 2022.
4. However, the death penalty was set aside and substituted with a sentence of thirty five (35) years imprisonment from the date he was convicted.
5. The Applicant has approached this court vide application dated 15<sup>th</sup> October 2025 seeking resentencing in accordance with the Supreme Court directions in the case of Francis Kariuki Muruatetu & Another =Versus= Republic (2021) eKLR.
6. I find that although the Applicant did not prefer an appeal, she is entitled to benefit from the directions given in the Francis Kariuki Muruatetu case (Supra).



7. The application for resentencing by Doncia Wakesho Mganda is hereby allowed. The death sentence imposed on the Applicant on 22nd June 2017 is set aside. In its place, the Applicant is sentenced to serve thirty-five (35) years imprisonment.
8. This sentence shall be computed from the date of the Applicant's conviction on 22nd June 2017.
9. This conclusion is founded upon the established principles of Kenyan constitutional and criminal law regarding the review of mandatory death sentences.
10. The binding precedent is the Supreme Court of Kenya's decision in Francis Karioko Muruatetu & Another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2021] eKLR, which affirmed that the mandatory nature of the death sentence for murder is unconstitutional as it deprives the court of the discretion to consider the convict's mitigating circumstances.
11. Consequently, all persons previously sentenced to death under the now-invalidated mandatory regime are entitled to be heard in resentencing.
12. While the Applicant did not personally appeal her conviction and sentence, her right to seek resentencing flows directly from the Supreme Court's declaration of a constitutional right.
13. The doctrine of equal treatment, a cornerstone of fairness under Article 27 of *the Constitution*, dictates that she should not be prejudiced for not having filed an appeal, especially where a co-accused in the same trial has successfully had his sentence reviewed on the same grounds.
14. The present scenario is directly analogous; the Applicant's co-accused, Vincent Maghanga Mwasighwa, successfully appealed and had his death sentence commuted to thirty-five years' imprisonment by the Court of Appeal.
15. To deny the Applicant a similar reconsideration would perpetuate an untenable inequality.
16. In determining the appropriate substitute sentence, the court is guided by the objectives of sentencing as articulated in Kenyan jurisprudence, which include retribution, deterrence, rehabilitation, and restoration.
17. The nature of the offense of murder, which involved the unlawful taking of a life, is grave and demands a custodial sentence of significant length.
18. However, the court must also consider any mitigating factors presented by or on behalf of the Applicant, such as her conduct during trial and incarceration, the period already served, and her prospects for rehabilitation.
19. The sentence of thirty-five years imprisonment imposed on the co-accused by the Court of Appeal provides a relevant and persuasive benchmark.
20. In the interest of consistency and fairness between co-offenders arising from the same factual matrix, and in the absence of distinguishing circumstances warranting a markedly different term, it is just to impose a similar sentence.
21. This approach finds support in the principle that co-convicts in a single trial should generally receive comparable sentences unless their individual culpability or circumstances materially differ.
22. Therefore, substituting the death penalty with a term of thirty-five years' imprisonment, reckoned from the date of the original conviction, strikes a just balance between the gravity of the offense and the constitutional imperative of individualized sentencing.



23. The death penalty imposed upon the Applicant is set aside and substituted with a sentence of thirty five (35) years imprisonment from the date of her conviction by the High Court.
24. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> DAY OF JANUARY 2026 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

State Counsel: Mr. Ngigi

The Applicant

