

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. E002 OF 2024

REPUBLIC
-VERSUS-

JOSEPH KATHYAKA

MULWA.....ACCUSED

SENTENCE

1. The accused **Joseph Kathyaka Mulwa** was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; The particulars of the offence are that on the 22nd day of December 2023 at Makotonini market, Kamwala Sub-location, Mwala Sub-county within Machakos County, unlawfully killed **PETER MASILA KYALO**.
2. The Accused took plea on 14/02/2024 and he pleaded not guilty before Hon. Justice F. Rayola Olel. The case was mentioned on 4/07/2024 when a hearing date was fixed. Mr. Tamata Counsel then for the Accused prayed for admission of the Accused to bond/bail. The application was opposed by the Prosecuting Counsel Ms Agatha who indicated that the application should be reviewed once key witnesses in the case had testified,
3. The case was heard on 31/10/2024 when four witnesses testified. Counsel for the Accused then applied for review of the bond/bail application. The Investigating officer confirmed that the key witnesses had testified and thus the Prosecution had no objection to the Accused being granted bond/bail. The pre-bail report dated 05/03/2024 recommended that the Accused be admitted to bond/bail once the key witnesses had testified. The court thus admitted the Accused to bond on conditions.

4. When the case came up for further hearing on 05/06/2025, Mr. Kyalo, Counsel for the Accused informed the court that his client's clan was in talks with the Deceased's clan on the possibility of resolving the case amicably and sought for time to follow up on the same. The Prosecutor who indicated that she had two witnesses requested to have the witnesses testify thereafter the parties would pursue plea bargain.
5. Dr. Mwendo Muthini (PW5), the Government Analyst testified and produced the Post Mortem Report dated 9/01/2024 as PExt.1 and the Exhibit Memo as PExt.2. The case was then adjourned to allow parties room to pursue plea bargain.
6. A Plea Agreement dated 17th November 2025 was presented in court on the 18th November 2025. The court after interviewing the Accused was satisfied that he had understood the legal process of plea negotiation and had executed the Agreement voluntarily. The court accepted the Plea Agreement which contained the facts of the case.
7. The facts of the case are that on 22/12/2023, the deceased **Peter Masila Kyalo** called the Accused **Joseph Kathyaka Mulwa** who was his fellow businessman where they both owned and operated retail shops at Makotonini market, Kitange village, Kamwala Sub-location, Mwala Location in Mwala Sub-County within Machakos County to inform him that his shop had been broken into at night. The deceased lived in a room behind the shop at the market and therefore he could possibly hear the shop being broken into since they neighbour each other. Later the accused went to the market to check if it had really been broken and found the thieves accessed the shop from behind and broke the door. The deceased explained to the accused how the thieves broke into the shop and the accused suspected the deceased to have been involved in the stealing. The

accused found some items missing from the shop. At around noon on the same day, the accused requested the deceased to allow him check his shop if the stolen items were in his shop since the deceased had been suspected of buying stolen property. The accused followed the deceased to his shop and after entering inside he saw a sack with items placed on the ground inside the counter. The accused asked to check what was inside the sack but the deceased took a panga and threatened to cut the accused. The deceased became fierce and the accused took a bottle which had petrol in it from the shop counter and sprinkled it on the deceased and while he was on the other side of the counter. The accused then took a matchbox and threatened to light the deceased if he could not allow him to look inside the sack. The deceased tried to get out of the counter while armed with a panga but the accused lit the matchstick and threw the burning matchstick to the deceased who had petrol sprinkled on his body and he caught fire. The deceased went out with fire all over his body while screaming. Witnesses saw the accused pour additional petrol on the deceased and ran away. The people in the market assisted to put the fire in the shop and on the deceased person. The accused went to Mwala police station where he was arrested. Investigations commenced and the scene was visited by DCI officers from Masii Sub-County and the body taken to the mortuary. Samples of the ash were collected and a panga recovered. The Post Mortem was conducted on 29th December 2023 and as a result of the examination, the doctor formed the opinion that the cause of death was inhalational burns 2^o to thermal burns. The report from the government analyst dated 2nd December 2024 stated that diesel, a product of petroleum oil, and a fire accelerant that is less flammable than gasoline/petrol was detected in the ash sample collected.

8. Subsequently, the accused was charged with the offence of murder which has now been substituted to manslaughter through plea bargain.
9. The Accused then took plea on the substituted charge of manslaughter on 20th November, 2025. He pleaded guilty and the court entered a plea of guilty.
10. Prior to sentencing hearing on 18th November, 2025, Mr. Kyalo learned defence counsel submitted in mitigation and invited this court to consider what is captured in the Plea Bargain Agreement and the documents presented with it including the Affidavits sworn on 5/11/2025 and the annexures thereto mostly annexure No.2 & 3 on the clans' meetings by the accused and deceased's families and the mutual settling of the case. The court was further asked to consider that the accused person is remorseful and sorry on the activities of 22/12/2023 which led to the demise of the deceased. The accused is a first offender with no previous records of crime. That the clan of the accused and deceased had agreed on the process of compensating the deceased's family. The accused is a family man with a young family and is the sole bread winner. He provides for his aged parents too. The accused had trained in some programmes for the one-year period he was in custody and prayed to be given a chance to reform. That the accused has saved the precious judicial time and resources by pleading guilty. Counsel asked the court to sentence the accused to non-custodial sentence.
11. The Prosecution Counsel, Ms. Agatha Abang appreciated the efforts of both families to resolve the matter amicably.
12. The Plea Agreement Report herein at part 11 shows that both the Accused person through his Counsel and the Prosecution recommended for a three (3) years non-custodial sentence for the Accused.

13. This court is versed with the sentencing objectives in Kenya which are 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.

14. I have considered the sentencing objectives in totality. The accused person is a young man with a whole life ahead of him. He requires reconciliation through the help of his community to enable him mend the relationship between him, the deceased's family and the community at large.

15. I have also considered the submission that the Accused was remorseful and has been forgiven by both his family and that of the Accused through the plea bargain process.

Disposition

20. Having taken all factors into consideration and being aware that the sentence to be imposed upon conviction is within the sole discretion of the court, this court makes the following orders:

- (i) The accused having entered into Plea Bargain Agreement pursuant to the provisions of Section 137A-Q of the Criminal Procedure Code Cap 75 and him having pleaded freely, voluntarily without threat, force, intimidation or coercion of any kind and without promise of any kind other than as contained in the Plea Bargain Agreement herein dated 17th November 2025, he is convicted and sentenced on his own plea of guilty for the offence of Manslaughter contrary to Section 205 of the Penal Code.
- (ii) The Accused is sentenced to serve three (3) years non-custodial, community service through the Probation Department, Machakos County.
- (iii) The Accused is ordered to fully co-operate with his probation supervisor during the period of serving his non-custodial sentence imposed herein, failure to which he will serve any remainder of the same in custody.

Orders Accordingly.

SENTENCE WRITTEN, DATED & SIGNED AT MACHAKOS THIS 20TH
JANUARY 2026

**NOEL I. ADAGI
JUDGE**

SENTENCE READ AT MACHAKOS THIS 20TH JANUARY 2026