

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL CASE NO. E003 OF 2025**

REPUBLIC .....PROSECUTION

**VERSUS**

BRIAN WACHIRA MURIUKI.....ACCUSED

**JUDGMENT ON SENTENCING**

**The Charge**

1. The accused was charged with murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars of the offence are that on 14<sup>th</sup> December 2024 at Mariari village, Mariari location, in Mbeere South Subcounty within Embu County, the accused murdered Sabina Njoki Kisangi.
2. The accused pleaded not guilty and the plea was duly entered. At the pre-trial conference stage, the accused preferred to enter into a plea agreement with the prosecution.

**Plea-Bargaining Agreement (PBA)**

3. A PBA dated 10<sup>th</sup> November 2025 was signed by the accused, his advocate and the prosecuting counsel. The accused pleaded guilty to the offence of the manslaughter contrary to section 202 as read with 205 of the Penal Code. The PBA was availed in court together with court's compliance form for recording the plea agreement, a statement of facts, and the deceased's post-mortem report dated 16<sup>th</sup> December 2024.
4. The court was satisfied that the accused person understood his rights under section 137F of the Criminal Procedure Code indicated by his signature on the Court Form. The court was satisfied that he was mentally sound and voluntarily signed the plea agreement. Consequently, the PBA was adopted as part of the court record.
5. Accordingly, the accused person was convicted with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Under Section 205 of the Penal Code, the punishment for Manslaughter is imprisonment for life.

6. The Court ordered that a Pre-sentence Probation Report be filed which was done prior to mitigation.

### **Mitigation**

7. In mitigation, the accused stated that he is 27 years old with no previous record of criminal activity. That the deceased was his grandmother and before the incident, they lived peacefully and he loved her. He is a graduate from NYS having undertaken a building and construction course. At the time of the incident, he was a casual labourer and a shamba boy. On the day of the incident, he stated that while working, he was overcome by a strange power that pushed him to the ground and he ran home and started hurling stones randomly.
8. One of the stones hit his grandmother on the head and she sustained injuries. He said that he did not have cognizance of what he was doing. Since then, however, he regrets the events leading up to the death of the deceased and he is remorseful. He prayed for a lenient non-custodial sentence. He believed that the deceased would have forgiven him for such an offence. He stated that his family has forgiven him and they would like him back home.

### **Response to Mitigation**

9. In response to mitigation, the prosecution stated the deceased was a 90-year-old vulnerable member of the society. That the family of the deceased is still in disbelief and the community thinks that the accused was under the influence of some strange powers at the time of the incident. The prosecution recommended a custodial sentence to be determined by the court.

### **The Probation Officer's Pre-Sentence Report (POR)**

10. According to the Probation Officer's Report dated 21<sup>st</sup> November 2025, the accused person's family which is also the family of the deceased, have made peace with the accused for the incident. They expressed that they do not mind having the accused back home with them. They acknowledge that he is a well-disciplined person who is believed to have been a victim of witchcraft or some form of possession. The community also believed that the act leading to the death of the deceased might have been caused by influence of evil spirits given that the accused related well with the deceased prior to the incident. In fact, the day before the incident, he had bought the deceased some food. The POR recommended a non-custodial sentence.

## The Facts of the Case

11. The facts of the case as summarized by the prosecution are as follows:

1. On 9<sup>th</sup> December, 2024 at around 1400hrs, the accused person was at his mother's home when he started screaming. His grandmother (the deceased) and his aunt came to find out from him what the matter was. He then started hurling stones at them as he chased them away. Thereafter he ran and hid in a nearby forest. Both the aunt and grandmother sustained serious injuries and were taken by good Samaritans to Embu Level V Hospital where they were admitted. On 14<sup>th</sup> December, 2024, the deceased grandmother succumbed to the injuries while undergoing treatment.
2. Police officers from Kiritiri Police Station thereafter arrested the accused person who upon interrogation stated that he was overcome by some strange powers which compelled him to commit the act and was remorseful about it.
3. On 16<sup>th</sup> December, 2024 in the presence of Peterson Munyi Mbutia and Loise Muthoni Njue a Post Mortem of the deceased was conducted at Embu Level V Hospital Mortuary by Dr. Mwaniki Job. He formed the opinion that the cause of death was severe head injury with biparietal subarchnoid hematoma secondary to blunt force trauma to the head.
4. On the 7<sup>th</sup> January, 2025 the accused person was examined by Dr. Joseph Thuo, Consultant Psychiatrist at the said hospital, who found him fit to stand trial. The Murder weapon being a broken stick with blood stains was recovered at the scene of murder. The accused person was then charged with the offence of Murder, which has now been reduced to Manslaughter.

## Analysis and Determination

12. The court in this matter is guided by the provisions of the Judiciary Sentencing Policy Guidelines 2023 as amended by the guidelines of the Supreme Court in the case of ***Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR)***.

13. Under section 205 of the Penal Code, the accused is liable to face a punishment of life imprisonment. In April 2025, the Supreme Court found life imprisonment sentence to be lawful and applicable. This was the finding in the cases of ***Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR) (Ayako case)*** and

**Republic v Manyeso (Petition E013 of 2024) [2025] KESC 16 (KLR) (Manyeso case)** where it was held that only parliament bears the power to revise a sentence prescribed under a statute.

14. Despite this, the court should exercise its discretion given the circumstances of the case. The prosecution has recommended a custodial sentence to be determined by the court while the accused has prayed for a lenient non-custodial sentence. The POR is favorable and the circumstances leading to the death of the deceased have been blamed on influence by evil spirits/powers. Generally, it has been stated that the deceased and the accused related cordially and the incident cannot be explained rationally.
15. The court must balance the rights of the accused to a lenient sentence with the rights of the victim's family. In this case, the family of the accused is the same as that of the deceased. In their view, the accused should not be subjected to a custodial sentence since they have come to terms with the death of the deceased and they have forgiven the accused. It is noted that the deceased was 90 years old at the time of her death and she succumbed to injuries sustained from the attack by the accused. In other words, the death could have been avoided.

#### **Disposition**

16. Accordingly, I hereby sentence the accused to imprisonment for a term of 3 years followed by a non-custodial sentence of 3 years. During the latter period the accused shall be engaged in Community Service in a Programme designed and facilitated by the Probation Officer.
17. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 18<sup>th</sup> day of February, 2026.**

---

**R. MWONGO  
JUDGE**

#### **Delivered in the presence of:**

1. Accused Present in Court
2. Kimathi for Accused
3. Ms. Mwaniki for the State
4. Francis Munyao - Court Assistant