



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E011/2022

THE REPUBLIC VS YUNUS ATHMAN

RULING

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE NO. E011 OF 2022**

REPUBLIC..... PROSECUTOR

VERSUS

YUNUS ATHMAN..... ACCUSED

RULING ON SENTENCE

- 1.The accused person herein, No. 242905 PC Yunus Athman, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence as per the information are that on the 10/9/2018 at Mwenza village in Mtongwe Location, Likoni sub-county within Mombasa County murdered Mbaraka Maitha Omar.
- 2.He pleaded not guilty to the charge and after a full trial he was found guilty and convicted for the offence of murder. The court then called for both Victim Impact Statement and Pre-sentence inquiry Report. The same were prepared and filed by Mr Boytone Omondi, a Senior Probation Officer.
3. The accused person's advocate Mr Wangila, filed written submissions on mitigation and Mr Ngiri submitted on behalf of the state.
- 4.Sentencing is an exercise of the Court's discretion. The Court is guided by the Constitution, any other relevant laws on sentencing and the 2023 Judiciary of Kenya Sentencing Policy Guidelines. Despite the importance of the guidelines,



sentencing remains the exercise of judicial jurisdiction as was expressed by the Supreme Court in **Francis Karioko Muruatetu & Another -V- Republic (2017) eKLR** where the Court held: -

“(72) we wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process”.

5. Page 15, paragraph 4.1 of the Sentencing Policy Guidelines provides as follows:

- (i) **Retribution**: to punish the offender for his/her criminal conduct in a just manner;
- (ii) **Deterrence**; to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences;
- (iii) **Rehabilitation**; to enable the offender reform from his/her criminal disposition and become a law-abiding person;
- (iv) **Restorative justice**; to address the needs arising from the criminal conduct such as loss and damages;
- (v) **Community Protection**; to police the community by incapacitating the offender.
- (vi) **Denunciation**; to communicate the community’s condemnation of the criminal conduct.
- (vii) **Reconciliation**; to mend the relationship between the offender the victim and the community
- (viii) **Reintegration**; To facilitate the re-entry of the offender into the society.

6. In sentencing, the court also considers various mitigating factors. (See **Muruatetu Case**)

- i. Age of the offender;
- ii. Being a first offender;
- iii. Whether the offender pleaded guilty;
- iv. Character and record of the offender;
- v. Commission of the offence in response to gender-based violence;
- vi. Remorsefulness of the offender;
- vii. The possibility of reform and social re-adaptation of the offender;
- viii. Any other factor that the court considers relevant.

7. This Court has considered the mitigation by the Counsel and the reports on record. The prosecution did not have the accused’s person previous record and treated him as a first offender. In his mitigation, the accused was said to be 40



years old. He is married to Ms Alice Bendera (a Kenya Airforce officer) and they have four children aged 14, 7, 5 and 1 years.

8. The report shows that the convict's 14-year-old is said to be crippled following a dog bite. The 7-year-old child has a neurological disorder having been diagnosed with a convulsion disorder and is on routine medication. The 1-year-old child was diagnosed with tracheoesophageal fistula, a congenital condition with abnormal connection between the esophagus and the trachea. The offender is said to be remorseful and is deeply concerned of the welfare of his young family. He therefore pleaded for leniency.
9. From the victim impact statement, the deceased was a young man aged 20 years old. His mother had to relocate to Malindi because of psychological and emotional trauma resulting from the death of her son. The family considers the actions of the offender as extreme, malicious and in stark violation of his oath of office. The report also shows that the deceased family has been negatively affected by the death of their loved one and are yet to heal.
10. Having taken his mitigation into account, the fact that he is a first offender, the pre-sentence report, the victim impact statement and the circumstances surrounding the commission of the offence, this court considers a retributive and deterrent sentence appropriate.
11. The offender being a police officer, had a statutory duty of protecting the victim's life. The victim was defenceless and the offender used extreme force. I note too that there is an increase of trigger happy and rogue police officers who pose a threat to the very people they are meant to protect.
12. A strong message needs to be sent. Life is inviolable. It is not diminished by status, circumstance, or suspicion. A police officer carries the power of the State, including the lawful authority to use force, but that authority is bounded strictly by law. Where that power is abused and a life is unlawfully taken, the offence transcends the individual victim; it strikes at the integrity of justice itself."
13. For that reason I sentence the offender to a prison sentence for the remainder of his life.
14. Right of appeal against both the judgement and sentence explained to the accused person in Kiswahili.
15. It is so ordered.

DELIVERED, DATED and SIGNED at MOMBASA on this 12th day of FEBRUARY 2026.
Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI
JUDGE

In the presence of:-





MR.WATILA
MR SIRIMA FOR THE STATE
BEBORA COURT ASSISTANT
MS. OTOTSI FOR IPOA

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-02-12 12:44:19