



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/5/2019

REPUBLIC VS NZAI MAKAZI NZAI KAZUNGU ALIAS CHIDIMBWI, NYAMAWI NGUTA ALI ALIAS
KIMALIZA, FATUMA MAKAZI HAMASI ALIAS STAMILI

RULING

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE NO. E005 OF 2019**

REPUBLIC..... PROSECUTOR

VERSUS

FATUMA MAKAZI HAMISI alias STAMILI 1ST ACCUSED
NZAI MAKAZI 2ND ACCUSED
KAZUNGU alias CHIDIMBWI..... 3RD ACCUSED
NYAMAWI NGUTA ALI alias KAMALIZA..... 4TH ACCUSED

RULING ON SENTENCE

- 1.The accused person herein, Fatuma Makazi Hamisi alias Stamili, Nzai Makazi, Nzai Kazungu alias Chidimbwi and Nyamawi Nguta Ali alias Kamaliza were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
- 2.Particulars are that on the night of 14/2/2019 at Magongo village in Mazola sub-location within Kinango sub-county of Kwale County jointly with others not before the court murdered Nyamvula Tsuma.
- 3.They pleaded not guilty to the charge and after a full trial the 1st, 2nd and 4th accused persons were found guilty and subsequently convicted to the charge. The court then called for both Victim Impact Statement and Pre-sentence inquiry Report. The same were prepared and filed by Rosemary A. Nyong'a,



assistant director Probation and aftercare services officer.

4.The accused person's advocates were served with the reports and Mr Ngiri submitted on behalf of the state.

5.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”.

6.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.

7.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.

8. In this case, for Fatuma Makazi Hamisi it is submitted that she was aged 24 years when the incident occurred. She is currently a single parent and a first offender. She is sorry that her bitterness about the ailment of her mother has led the family to this tragedy. She pleads for leniency.

9. The 2nd accused, Nzai Makazi Hamisi, is aged 36 years and has a young family who are dependent on him. He is a first offender and the offence occurred due to poor judgement and attachment to cultural beliefs that are retrogressive. He is remorseful and prays for leniency.

10. The 4th accused, Nyamawi Nguta Ali, is aged 50 years and is divorced. He is a herbalist and a first offender. The victim was his patient whom he had seen the previous day and was paid for his diagnosis. He was to make a follow up on the treatment, however his patient was murdered. The 4th accused is sorry that his patient died. He prays for leniency.

11. I have considered the letter dated 7/11/2025 filed by the victim's family indicating that they have forgiven the offenders and are willing to have them back in the family. They are praying that the court issues a non-custodial sentence upon the offenders.

12. Having taken the mitigation into account, the pre-sentence reports and the letter filed by the victim's family and the circumstances surrounding the commission of the offence, this court considers a deterrence sentence appropriate.

- i. The 1st offender is sentenced to serve 15 years' imprisonment.
- ii. The 2nd offender is sentenced to serve 20 years' imprisonment.
- iii. The 4th offender is sentenced to serve 20 years' imprisonment.

13. From the record the offenders were first arraigned in court on 5/3/2019. The 1st accused was released on bond on 4/7/2019. The 2nd accused was released on bond on 16/8/2019. The period spent in custody to be considered in computation of the prison term.

14. From the record the 3rd and 4th offenders failed to raise the bond terms hence their prison term to start from the 5/3/2019 when they were first arraigned in court.

15. Right of appeal against both the judgment and sentence explained to the offenders in Kiswahili.

16. 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

MR.WAIRAGU - ADVOCATE FOR A1
HOLDING BRIEF FOR MR.OYIER FOR A2
MR. ODONGO FOR A3

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-02-12 13:23:05