



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E018/2021

REPUBLIC VS ROBERT WALAULA KINISU

RULING

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE NO. E018 OF 2021.**

REPUBLIC..... PROSECUTOR

VERSUS

ROBERT WALIAULA KINISU..... ACCUSED

RULING ON SENTENCE

1. The accused person herein, Robert Waliaula Kinisu, 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 are that at an unknown date and time between 3rd May 2021 and 6th May 2021 at Marina area within Mtwapa Township in Kilifi County, murdered Jacqueline Ngina Kitheka, the deceased herein.
2. He pleaded guilty to the charge and after a full trial he was 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 Mr Stephen Muthoka, a Senior Probation Officer.
3. The accused person's advocate Mr Khamisi, made oral 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. In this case, it is the submission of Mr Khamisi Learned Advocate for the accused that the accused is aged 43 years. At the time of the offence he was married to one Scholastica whom they separated upon his arrest. Counsel stated



that the pre-sentence report indicates that the accused had earlier been convicted for robbery but was later acquitted by the High Court. That we are all equal before the law and that record should not taint his chances of a lenient sentence. He also stated that the accused has undergone a lengthy trial hence he has been adequately rehabilitated.

8. Mr Ngiri submitted on behalf of the state that the circumstances of the matter are well captured in the pre-sentence report and as shown by the husband to the deceased. That an innocent soul was lost because of greed of the accused person. That the family of the victim is devastated and still in shock. What they would expect was at least some remorsefulness which is not the case herein.
9. This Court has considered the mitigation by the counsel and the reports on record. From the mitigation and the pre-sentence report it is clear that the accused person does not take responsibility for the involvement in the death of the deceased. He insists that he did not know the deceased and has never interacted with her. The community from his former residence is currently hostile and his release may compromise his security.
10. At the time of her death the deceased was living as a spouse to one Harry Harrington Peter a British national who was living in Kenya. They had adopted three children from his relatives whom she was sponsoring their education and therefore they were left without a guide and their education was paralyzed. The family has not healed and prays for a harsh sentence similar to what the accused did to their kin.
11. Having taken his mitigation into account, the fact that he was earlier convicted to life imprisonment and later acquitted by the High Court on appeal, the pre-sentence report, the victim impact statement, the email address sent by the victim's spouse and the circumstances surrounding the commission of the offence, this court considers a retribution sentence appropriate, and community protection. The offender is a dangerous man and ought to be kept away from peaceful members of the society. I therefore sentence him to a prison term for the remainder of his life. (Life imprisonment)
12. From the record the accused person was first arraigned in court on 10/6/2021. He remained in custody throughout his trial. The sentence to run from 10/6/2021.
13. Right of appeal against both the judgment and sentence explained to the accused person in Kiswahili.
14. 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;-

THE ACCUSED PERSON AND HIS ADVOCATE
MR.

KHAMISI MR SIRIMA FOR THE STATE
BEBORA COURT ASSISTANT

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-02-12 12:50:06

