



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E022/2022

THE REPUBLIC VS WAMBUA NGOVE MATHIWA

RULING

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE NO. E022 OF 2022**

REPUBLIC..... PROSECUTOR

VERSUS

WAMBUA NGOVE MATHIWA..... ACCUSED

RULING ON SENTENCE

- 1.The accused person herein, Wambua Ngove Mathiwa, 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 dated 30th August 2022 are that on the 20/8/2022 at Malewa C village, Lungalunga sub-county, within Kwale County murdered Richard Ngove Mathiwa.
- 2.He pleaded not guilty to the charge and after a full trial the charge was reduced to manslaughter and was convicted of the same. 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 Masolia, 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



remorseful; he is concerned of the present circumstances of his children who are left without a parent since is deceased. He therefore pleaded for leniency.

8. The court called for a presentence report in which the accused was described as being hot tempered with frequent outbursts and Physical confrontations. In this case, he killed his own father because of alcohol.
9. Having taken his mitigation into account, the fact that he is a first offender, the presentence report, the victim impact statement and the circumstances surrounding the commission of the offence, this court considers a deterrence sentence appropriate. I therefore sentence the accused person to serve fifteen (15) years' imprisonment.
10. From the record the accused person was first arraigned in court on 30/8/2022. He remained in custody throughout his trial. The sentence to run from 30/8/2022.
11. Right of appeal against both the judgement and sentence explained to the accused person in Kiswahili.
12. 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 AND HIS ADVOCATE
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 12:39:07

