

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL CASE NO. E024 OF 2024**

REPUBLIC .....PROSECUTION

**VERSUS**

DENNIS MUTWIRI MWANIKI.....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 09<sup>th</sup> August 2024 at Gituara village, Gaturi North location in Embu North sub-county within Embu County, the accused murdered Stanley Mwaniki.
2. The accused pleaded not guilty and the plea was duly entered.

**Plea-Bargaining Agreement (PBA)**

3. At the point of pretrial, the parties entered into a Plea-Bargaining Agreement (PBA) dated 25<sup>th</sup> September 2025. It was signed by the accused, his advocate and the prosecuting counsel. The accused pleaded guilty to the offence of 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 and the deceased's post-mortem report dated 14<sup>th</sup> August 2024.
4. The court was satisfied that the accused person understood his rights identified under section 137F of the Criminal Procedure Code as signified by his signature on the Court Form. Consequently, the Plea Agreement was adopted as part of the court record.
5. Accordingly, the accused person was convicted for 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.

**Mitigation**

6. In mitigation, counsel noted that the family of the accused was present in court to show support for him. He is a 28-year-old man with a Diploma in Civil Engineering, who has

a bright future ahead of him. He stated that the accused was scheduled to travel to Qatar for work 2 weeks before the incident occurred. He stated that on the night of the incident, he went out to drink with his father who turned violent, forcing him to defend himself. In the process of self-defence, his father unfortunately died. He expressed remorse and prayed for a lenient sentence. He hoped for a non-custodial one.

### **Response to Mitigation**

7. In response to the mitigation, the prosecution stated that the deceased was a retired KDF officer who undeservingly met his death in the hands of his son. That a non-custodial sentence was unsuitable for him because the pre-sentence report shows that the accused has had violent fits before the one that led to his father's death. The pre-sentence report recommends both custodial and non-custodial sentences. The prosecution urged the court to mete an apt sentence.

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

8. According to the Probation Officer's Report dated 24<sup>th</sup> November 2025, the accused abuses alcohol, bhang and miraa, and his violent tendencies manifest after he has used these substances. His immediate family is still reeling from grief, but it is their hope that the accused will be handed a non-custodial sentence. The community from which the accused hails has expressed concern over the accused's behavior and his involvement in a gang that threatens the villagers.

9. Despite all these issues, the Report notes that the accused's family has remained very supportive of the offender since the incident occurred. The accused has expressed remorse for the offence and the family has taken it upon themselves to pursue healing especially after the accused signed a PBA. The report recommended a custodial sentence for a start, followed by a non-custodial sentence.

### **Summary of the Facts of the case**

10. The agreed facts of the case as presented by the prosecution are as follows:

- a) On 09<sup>th</sup> August 2024, at about 8:00pm, the deceased returned home while intoxicated and confronted his wife, Margaret Wanjuki Mwaniki. He questioned why she appeared cheerful despite their son, the accused, having earlier broken the windows of his car.
- b) When she inquired further about the broken glass windows, the deceased reacted violently, forcefully pulling her out of the house and locking her

outside. Consequently, the deceased's wife sought refuge at the nearby home of Cyrus Njoka, the deceased's brother, where she intended to spend the night.

- c) At around 10:00pm, the deceased's wife and her brother-in-law Cyrus Njoka heard unusual noises coming from the deceased's homestead. They proceeded to investigate and, upon reaching the main gate, observed the accused person leaving the compound while holding a metallic spade. The deceased's wife took the spade from her son, the accused, whilst Cyrus Njoka restrained the accused. The accused, however, managed to escape. Shortly thereafter, they were joined by village elders and other members of the community.
- d) Upon entering the house, they discovered the deceased lying on his back with blood oozing from his mouth. The deceased was rushed to Kianjokoma Level IV Hospital and later referred to Embu Level V Hospital, where he passed away while undergoing treatment. The accused was subsequently arrested later that night at their home.
- e) On 14<sup>th</sup> August, 2024 in the presence of Margaret Wanjuki Mwaniki and John Cyrus Njoka who identified the body, a Post Mortem of the deceased was at conducted Embu Level V Hospital Mortuary by Dr. Wangari Kamau. She formed the opinion that the cause of death was hypovolemic shock due to severe blunt chest and abdominal injuries consistent with assault. On the 14<sup>th</sup> day of August, 2024, the accused person was examined by Dr. Joseph Thuo, Consultant Psychiatrist at the said hospital, who found him fit to stand trial.
- f) Subsequently, the accused assisted police officers in locating and recovering the murder weapon - a metallic spade. The accused person was then charged with the offence of Murder, which has now been reduced to Manslaughter.

### **Analysis and Determination**

11. The court in this matter is guided by the provisions of the Judiciary Sentencing Policy Guidelines 2023 as amended by the directions 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)***.

12. Under section 205 of the Penal Code, the accused is liable face a punishment of life imprisonment. In April 2025, the Supreme Court held that a life imprisonment sentence is 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 has the power to revise a sentence prescribed under a statute.
13. In light of the foregoing discussion, this court can exercise its discretion on sentencing given the circumstances of the case. The prosecution has recommended an appropriate custodial sentence, while the accused prayed for leniency. The accused is the son of the deceased. Thus, the family of the accused and the deceased is the same. They hope that a non-custodial sentence will be meted out against their family member, the accused. The POR states that the community is apprehensive of the accused's behavior as he mingles with a gang that disturbs them.
14. The court notes the support which the family of the accused has offered him during his time in custody after the incident and even in court.

### **Disposition**

15. In the result, I hereby sentence the accused to imprisonment for a term of nine (9) years commencing on 10<sup>th</sup> August, 2024 when he was arrested. The last three (3) years of his sentence shall be served as a non-custodial term during which he shall be engaged in community service under supervision by the County Probation Officer.
16. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 11<sup>th</sup> day of February, 2026.**

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**R. MWONGO  
JUDGE**

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

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