



**Republic v Akello & another (Criminal Case 18 of 2013)
[2026] KEHC 1148 (KLR) (Crim) (10 February 2026) (Sentence)**

Neutral citation: [2026] KEHC 1148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 18 OF 2013**

**K KIMONDO, J
FEBRUARY 10, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

REUBEN SHANGI AKELLO 1ST ACCUSED

SIMON NDUNGU WAINAINA 2ND ACCUSED

SENTENCE

1. The two accused persons jointly murdered Peter Mungai Macharia (hereafter the deceased).
2. The offence is a grave felony that attracts the death penalty. However, following the Supreme Court decision in *Francis Karioko Muruatetu & another v Republic*, Consolidated Petitions Nos. 15 & 16 of 2015 [2017] eKLR, the mandatory nature of the death sentence as provided for under Section 204 of the *Penal Code* was declared unconstitutional.
3. It bears repeating that the decision did not outlaw the death penalty, but it left the court with discretion to impose a lighter sentence.
4. The circumstances surrounding the offence are detailed in the judgment delivered on 16th September 2025. In summary, on the night of 27th April 2011, the accused and the deceased were sharing Cell No. 2 at the GK Naivasha Main Prison. The two viciously assaulted the deceased and killed him: The 1st accused was holding him by the neck while the 2nd accused was raining blows on the stomach. When the cell was finally opened, the deceased was lying down face-up in a pool of blood.
5. I have taken into account the address by the learned prosecution counsel, Ms. Kigira, on sentencing as well as the mitigation tendered by both accused persons through their learned counsel.



6. The 1st accused is a first offender. It is instructive that he was previously convicted for the offence of robbery by the lower court but which was overturned by the superior court. The 2nd accused on the other hand has a previous conviction and continues to serve term.
7. Learned counsel for the 1st accused, Mr. Kimanzi, submitted that the accused has reformed and is remorseful. Considering his age and the long period spent in remand, he prayed for a lenient or non-custodial sentence.
8. Learned counsel, Ms. Mburu, for the 2nd accused opined that the mere fact that her client is serving term for another offence should not cloud the court's sentence for the instant offence. She emphasized that the accused retains his constitutional rights to dignity and that the sentence should not be based exclusively on retribution. It was in my view a plea for clemency.
9. I have then considered the pre-sentencing reports dated 27th November 2025 and 14th October 2025 respectively for each of the accused under the hands of Ms. Esther Mwalili and Ms. Salome Muthoni, Probation Officers, Nairobi. The report does not recommend a non-custodial sentence for the 2nd accused. However, the report for the 1st accused is non-committal and leaves the matter to the discretion of the court.
10. The views of the victim's family are well captured in the two social reports. The deceased was serving a sentence of life imprisonment for the offence of robbery with violence. He was aged 44 years and had three children then aged eight, seven and one respectively. They said the attack was "cowardly and barbaric". The family is "bitter, frustrated and disappointed" about the death of their kin and had hoped that his pending appeal at the superior court would be successful. They blamed the prison authorities for failure to protect the deceased.
11. Sentence should be commensurate to the moral blameworthiness of the offender but also guided by the nature and gravity of crime. Like I stated at the beginning, murder is a grave felony that attracts the death penalty. I find that justice in this case calls for a lengthy custodial sentence. I sentence each of the accused to twenty (20) years imprisonment. In accordance with section 333 (2) of the [Criminal Procedure Code](#), the sentence shall run from 27th April 2011, the date when they were placed in custody for the present offence.
12. The accused have a right of appeal to the Court of Appeal within 14 days and as per the [Rules](#) of that Court. A copy of the proceedings, judgment and sentence shall be supplied to them immediately.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF FEBRUARY, 2026.

KANYI KIMONDO

JUDGE

Sentence read virtually on Microsoft Teams in the presence of-

Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Kimanzi for the 1st accused instructed by Mitau Kimanzi & Company Advocates.

Mr. E. Ombuna, Court Assistant.

