



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. E006 OF 2022

REPUBLIC

PROSECUTOR

VERSUS

GERALD MMBAYA

ACCUSED

RULING ON SENTENCE

1. The Accused, Gerald Mmbaya was convicted for murder contrary to Section 203 as read with Section 204 of the Penal Code after which the court called for a pre-sentence report to assist with sentencing.
2. During mitigation, Ms. Khateshi for the Accused submitted that the Accused is remorseful for the offence and is willing to make amends to the victim's family. He is said to be a father of school going children and the sole breadwinner of the family. He prays for an alternative

- sentence to incarceration to enable him make amends and rehabilitate.
3. In response, the Prosecution stated that the Accused is a first offender but has been found guilty of a serious offence. They submit that the Accused's actions were aggravated by the fact that the Accused had armed himself signifying that he was prepared to harm the deceased.
 4. The Accused is said to have hated the deceased whom he suspected to be his widowed mother's lover. He armed himself with the intention of harming the deceased. In the process of confronting the deceased, he attacked his own brother and PW1, causing PW1 to lose a tooth. The Accused's actions were aggravating and without provocation.
 5. The pre-sentence report depicts the Accused as a forty (40) years old man having a history of aggression, sometimes linked to alcohol and substance abuse.
 6. Whereas the Accused acknowledges the seriousness and gravity of the offence, he committed a senseless act that robbed the victim's family of a dependable father and son.

- His children were deeply impacted by the death of their father and now face an uncertain future.
7. The victim's family is yet to come to terms with the loss of their loved one.
 8. I have carefully considered the mitigation and the pre-sentence report. Despite the Accused's plea for leniency and the fact that he has a large young family, his rights must be balanced against those of the victim and his family. The sentence meted out to him must be proportionate to the offence. Also, a custodial sentence only can achieve the objectives of sentencing as contemplated by the Judiciary Guidelines on Sentencing.
 9. In view of the foregoing, I sentence the Accused to thirty (30) years imprisonment which sentence shall run from 29th July 2025 when the Accused was remanded in custody pending sentencing.

Dated, signed, and delivered at Kakamega, this 10th day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Wanyonyi holding brief for Khatashi for the Accused

Ms. Chala for the State/Prosecution
Court Assistant: Polycap

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