

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CRIMINAL CASE NO. E025 OF 2020

REPUBLIC.....
.....PROSECUTOR

VS

SHADRACK NJUGUNA MWIKAMBA.....
ACCUSED

RULING ON SENTENCE

1. The Accused was initially charged with the offence of murder contrary to **section 203 as read together with section 204 of the Penal Code**. The Particulars of the offence were that on the 25th day of September 2020 at Kihumwiri Sub location, Kihumwiri location in Gatanga Sub County within Murang'a County, murdered *Moses Mburu*.
2. The Accused subsequently entered into a plea bargain agreement with the prosecution and opted to plead guilty to the offence of manslaughter **contrary to section 202 as read with section 205 of the Penal code**. On 19th May 2025, the charges were read to the accused to which he pleaded guilty. A post mortem report dated 29th September 2020 was also produced to support the prosecution's case which indicated that the cause of death was *Chest injury due to penetrating sharp force trauma(stab) to the chest consistent with homicide*. He also agreed to the facts as presented by the prosecution. He was therefore convicted of the offence of manslaughter on his own plea of guilty.

3. Upon conviction, the accused then proceeded to offer mitigation through his counsel, Mr Gioche. He urged the court to consider that the accused was remorseful for his conduct and prayed for leniency in his sentencing. The court was also urged to consider that the accused has been in custody since 2020 when the incident and that he was only 32 years old and desires a second chance in life. He added the court should consider a non-custodial sentence.
4. Mr. P. Mwangi for the state urged the court to give a deterring sentence on the basis that the accused on the basis that the aggravating factor is that the accused the accused went to his house to pick a knife and stabbed the deceased causing a penetrating wound to the chest which was not commensurate with the resistance by the deceased. He conceded that the period spent in custody should be taken into account in light of Section 333(2) of the CPC. He however urged the court to consider a custodial sentence.
5. Pursuant to the directions of the Court a that a pre-sentence report dated 8th August 2025 was availed recommending for a non- custodial sentence on the basis that the accused will be taken through a targeted treatment plan to address his addiction issues and psychosocial support. It is also indicated that the victim and the accused families are willing to accept him back to the society and do not see him as a security threat.
6. The Court has taken to account the mitigation together with the Probation Officer's Report submitted to court on 8th August 2025. The aforesaid Probation Report states that the victim's family are not opposed to the Accused release on a non-custodial sentence and do not consider the Accused a threat to them. I have also taken into account that the accused's age at

the time of commission of the offence and the fact that he has been in custody for five (5) years.

7. That being said, this court does not lose sight of the circumstances under which the offence was committed or the fact that life was lost prematurely.

8. Under **section 205** of the **Penal Code**, the accused is liable face a punishment of life imprisonment. The Supreme Court in **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)** held that a life imprisonment sentence is lawful and applicable. This was the finding in the cases where it was held that only Parliament has the power to revise a sentence prescribed under a statute. See the holding in **Republic v Mwaniki [2026] KEHC 1302 (KLR)**.

9. The Court is cognizant of the fact that is a first offender and is remorseful for the offence committed. The Court is alive to the fact that during the commission of the subject offence the Accused was intoxicated hence, his judgment was impaired in the heat of alcohol-induced passion. Furthermore, the Accused has spent in excess of five (5) years in custody.

10. I have taken into account the accused mitigation, the sentiments of the complainant's family and the Pre-sentence report.

11. The Court can exercise its discretion on sentencing given the circumstances of the case. The Probation Officer has recommended an appropriate non-custodial sentence.

12. I have therefore taken all factors into consideration, **and hereby sentence the accused to TEN (10) years imprisonment on the following conditions:**

a) The sentence shall run from the date of the accused's first incarceration in this matter.

b) The remaining term of the custodial sentence shall stand suspended; and;

c) The accused shall be released to serve a three (3) year probation period on a programme to be designed and assigned by a Probation Officer in the area where the accused's family shall be living.

d) Should the accused have any negative contact with the law or commit any offences within three (3) years from today's date, the suspended sentence shall be re-imposed and he shall serve the remaining term thereof.

e) Right of appeal fourteen (14) days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 26TH DAY OF FEBRUARY, 2026.

**HON. T. W. Ouya
JUDGE.**

For Accused...Shadrack Njuguna Mwikamba (Present in Person)

For Accused.....No appearance by defence counsel

For State.....P. Mwangi

COURT ASSISTANT.....Brian

ORIGINAL