



**Republic v Kawiria (Criminal Case E012 of 2025)
[2026] KEHC 3459 (KLR) (17 March 2026) (Sentence)**

Neutral citation: [2026] KEHC 3459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E012 OF 2025**

**JN ONYIEGO, J
MARCH 17, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOYCE KAWIRIA ACCUSED

SENTENCE

1. The accused was charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. Particulars are that on the 31st March, 2025 at Chuma Mrefu area in Wajir Township Location, Wajir East Sub-county, within Wajir County, she murdered Silas Munene Mboroki.
2. Having pleaded not guilty, the matter was fixed for hearing. However, after taking the evidence of four prosecution witnesses, the parties entered a plea bargaining agreement dated 26th February, 2026. The accused did not compensate the deceased family in any way.
3. In the said agreement, the accused agreed to plead guilty to committing a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. She subsequently pleaded guilty on 3rd March, 2026 and accordingly got convicted the same day. The court then ordered for a pre-sentence report.
4. According to the report, the accused is suitable for a non-custodial sentence. The report describes the accused as a middle aged woman at the age of 37 years; single mother of three children, two of whom are in school; sole breadwinner of her family; has a good reputation in prison; has never been out on bond since her arrest; she is remorseful; she has sought forgiveness from the victim’s family through her family; she is a first offender and pleads for non-custodial sentence.
5. On the other hand, the victim’s family states that the victim and the accused were friends; the accused’s family had approached them for reconciliation though no compensation was undertaken due to limited resources; there is no bad blood between the two families; the victim’s family is not hostile to



- the accused's family but they are apprehensive of their safety and thus leaves the matter to the court to make its determination.
6. In mitigation, Counsel for the accused adopted the report of the probation officer seeking a non-custodial sentence. The prosecution opposed the committal of the accused to a non-custodial sentence on grounds that; she is not remorseful; no compensation has been made and that the victim's family is apprehensive of their safety.
 7. It is trite that sentencing is at the discretion of the trial court. See *Kipkoech Kogo - vs - R. Eldoret Criminal Appeal No.253 of 2003* where the Court of Appeal stated thus:

“sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka – vs- R. (1989 KLR 306)*”
 8. Similar position was stated by the court of appeal in *Bernard Kimani Gacheru vs. Republic [2002] eKLR* where it was stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”
 9. It is however worth noting that in exercise of its discretion, a court is duty bound to take into consideration certain guiding principles interalia; the aggravating nature of the offence committed; the mitigating factors; pre-sentence report; previous criminal record of the accused; and victim impact assessment report. See judiciary sentencing policy guidelines clause 4.5 of 2023.
 10. This court is pretty aware of the objectives of sentencing which are also captured in the judiciary sentencing policy guidelines clause 1.3.1 of 2023 as; retribution, deterrence, rehabilitation, restorative justice, community protection, denunciation, reconciliation and reintegration.
 11. I have considered the circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused is remorseful. She is a mother of three children and sole breadwinner. She saved court's time by pleading guilty.
 12. It is worth noting that the deceased and the accused were friends; were staying in the same plot and used to drink alcohol for leisure. On the fateful day, the deceased while drunk went to the plot and started arguing with the accused who was peeling potatoes to fry chips. The argument degenerated into a fight and in the scuffle, the accused stabbed the deceased with a knife. The deceased succumbed to the injuries before he could get medication. To some extent the deceased was the author of his own death.
 13. Having taken into account the circumstances under which the offence was committed, I find a sentence of five years imprisonment appropriate. In so doing, I have taken into account the period spent in remand custody.



ROA 14 Days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 17TH DAY OF MARCH, 2026

.....

J. N. ONYIEGO

JUDGE

