

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CRIMINAL CASE NO. 10 OF 2020

REPUBLIC.....

.... PROSECUTION

VERSUS

FAITH MWENDE LUKAS.....

..... ACCUSED

JUDGMENT ON SENTENCE

1. The accused was arraigned before the court charged in two (2) counts with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charges are as per the charge sheet.
2. The information was read to the accused and she pleaded not guilty thereto and the case was fully

heard. By a judgment dated 5th February 2026, she was convicted on both counts of the offence herein.

3. Subsequently, the court was given records which indicate that she is a first offender. The defence counsel offered mitigation submissions on behalf of the accused which are considered herein. In the same vein, the court ordered for and was provided with the pre-sentence report which is also considered.
4. The afore reports reveal that the accused is a first offender. That she admits committing the offence stating that she was under a lot of stress after her husband told her to remain and live in his rural in Mumias, Western region but she did not want to do so as she had been mistreated by her in laws.
5. That on the day of the offence, she argued with her husband after she found a message in her husband's phone from another woman. That her husband beat her and the children, until she lost

consciousness. That when she woke up the household things were spoilt, the door locked from the outside and her husband had taken her phone. That she thought her life was over, took a knife and stabbed the deceased until they died and they cried in pain and then she stabbed herself in the stomach and lit the house on fire with kerosene. That she woke up in the hospital.

6. The pre-sentence report further reveals that the accused's family has strong family ties. That they visit the accused in remand and have kept close contact. Further, they are raising the accused's sixteen-year-old daughter, whom the accused conceived from a previous marriage. Furthermore, the accused's daughter visits her when possible and does not believe the accused committed the offence. The accused's family prays for a lenient sentence so that the accused can continue caring for her daughter.

7. The report also indicates that the accused is thirty-three (33) years old, and schooled up to class 8 but did not proceed to secondary school due to financial constraints. That, she got her daughter at 17 years old and moved to Mlolongo town where she sold black coffee on the streets which she sent to support her parents. That she met her husband at mlolongo in the year 2015 and started living together and got the two (2) children, the deceased herein. That she was not working after her husband requested her to stay home and take care of the children. Further their marriage was riddled with issues of domestic violence
8. The report indicates that accused is remorseful and regrets committing the offence against her children who were happy and bright and would be continuing with their lives. She acknowledges that she did not deal with stress correctly. That she understands the seriousness of the offence and is ready to bear the

consequences, including serving time in prison though she hopes that someday to be released and reunited with her family.

9. The community at Site area stated that the accused was not well known but that she was a member of AIC Church and she did not have any criminal behavior. That the neighbours knew of their marital problems as they had heated arguments occasionally. The Assistant Chief of Kyambuko village, Machakos County, stated that the accused and her family were known to be upright citizen with no history of criminality and that the accused would not face any security risk if released.
10. However, the victims' father who is also the accused's husband states that he is devastated by the death of the deceased and has gone through a lot of psychological stress and financial implication. That he remains traumatized at the offence especially due to the fact that it was committed by a woman

he loved, and could not go to work due to grief. That his employer is supportive allowing him time off. That he has gone for professional counselling but it has not helped him. That he lives alone with no family or friends nearby.

11. He states that he does not maintain communication with the accused's family. That he buried his children in his own land in Mumias as his family refused him to bury them in their ancestral land as they opposed his marriage. That his family even mistreated the accused when they previously attended his grandmother's burial.

12. The deceased's father further states that the accused acted out of character when she committed the offence. That he visited the accused while she in remand and he accepted that the deceased are not coming back. That he has forgiven the accused and believes that she can be rehabilitated. That while he is not opposed to her being given a non-custodial

sentence, she should be accountable and face the consequences of her action and states he will respect the court's decision.

13. In conclusion, the probation officer notes that the offence led to the loss of two (2) young children and therefore the accused cannot be recommended for a non-custodial sentence but can be given a lenient sentence.

14. The accused in mitigation submissions referred the court to the case of Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR) where the Supreme Court of Kenya noted the importance of mitigation being that it allows the court to consider factors that it may have overlooked in the accused's personal history and circumstances of the offender that if not considered would make the sentence disproportionate to his criminal culpability. Further,

the Supreme Court listed factors that to be considered by a court in passing sentence.

15. The accused urged the court to consider that she is a first offender. That she had a troubled marriage and was mistreated and rejected by her husband's family. That although she overacted, the accused has learnt her lesson and is remorseful. That she has a good record with her family and the community and her husband has forgiven her. Further that she has learnt her lesson and is remorseful and asks for a chance to be reunited with her daughter and prays for a lenient sentence including a non-custodial sentence.

16. In addition to the afore reports, the court has considered the objectives of sentence outlined under clause 1.3 of the Sentencing Guidelines (2023) as: -

a) Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to

deter future crime. Victims and society might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system

b) Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences. Thus it is divided into two components; individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence. Other

people are deterred from committing those offences by the punishment meted out to those who commit them.

c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.

d) Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the

community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Any harm done to the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position. The goal of restoration is to make up for any harm the perpetrator has caused the victim.

e) Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the

expense of the criminal investigation and punishment.

f) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

g) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

h) Reconciliation: To mend the relationship between the offender, the victim and the community.

i) Reintegration: To facilitate the re-entry of the offender into the society.

j) Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should

not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence or it may entail a sentence of life in jail without the chance of release.

17. In addition, the case of *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR)* the Supreme Court of Kenya, set the factors to consider when meting out sentence as follows: -

“71. As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

(a) age of the offender;

(b) being a first offender;

- (c) whether the offender pleaded guilty;*
- (d) character and record of the offender;*
- (e) commission of the offence in response to gender-based violence;*
- (f) remorsefulness of the offender;*
- (g) the possibility of reform and social re-adaptation of the offender;*
- (h) any other factor that the court considers relevant."*

18. In considering all the aforesaid and in particular the fact that; the maternal grandparents of the deceased, the accused surviving daughter and deceased's step sister, the deceased father have all acknowledged that the murder of the deceased was cruel, and has caused them tremendous stress. That they knew the deceased children well and are still to come to term with their loss.

19. Furthermore, all parties interviewed including members of the community pray that justice be

done for the deceased. The accused too supports the same in her sentiments capture in the pre-sentence report.

20. However, the most import fact is that, the innocent children met their death in the most cruel, heinous and very painful manner perpetrated by no other than their own mother. They watched her pick a knife and brutally stab them severally as they cried. As she stabbed one the other watched as his turn came. She stabbed not once but severally. As if that was not enough, she set the house on fire to ensure that the children were completely burnt and never remembered at all.

21. The poor innocent children had no choice where they were born. They had no contribution to what marriage challenges the parents had and therefore cannot have been so mercilessly murdered for apparent reason. The accused could only vent her

anger on the person who offended, who she identifies as her husband.

22. The accused explanation of stress has no room in this matter. She had been to her parents severally when she had matrimonial problems. The parents welcomed her and warned not to return to her husband; she went back indicating she was still willing to continue staying with him despite the alleged abuse. She could have left the children with her parents if she wanted to kill herself.

23. What she did to the children is unacceptable in any society and calls for a severe and deterrent sentence. It calls for justice for Derrick and Brighton. The children life was cut short in a cruel manner to allow the accused freedom which the children will never know would be abuse of the court process and subversion of justice.

24. Consequently, I sentence the accused to serve LIFE IMPRISONMENT on each count and by the nature of sentence, it shall run concurrently.

25. It is so ordered.

Dated, delivered and signed on this 18th day of March 2026.

GRACE L NZIOKA

JUDGE

In the presence of:

Ms Chepkonga for the State

Mr Owour for the accused

Accused present virtually

Ms Hannah: court assistant