

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CRIMINAL CASE NO. E009 OF 2022

REPUBLIC.....

.....PROSECUTION

VERSUS

JOSEPH MUNERIA MUTERWA.....

..... ACCUSED

JUDGMENT ON SENTENCE

1. The accused was arraigned before the court charged 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 charge are as per the charge sheet.
2. The information was read to the accused and he pleaded not guilty thereto and the case was fully heard. By a judgment dated 12th February 2026, he

was acquitted on the charge of murder but was found guilty on the lesser charge of manslaughter and convicted accordingly.

3. Subsequently, the court was given records which indicate that the accused 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 and victim impact assessment report which are also considered herein.
4. Pursuant to the aforesaid, the pre-sentence report reveals that the accused comes from a close-knit family with no record of criminality. That the family attempted to reconcile with the deceased's family but did not make any progress as they were met with great hostility. However, they are open to further attempts with the assistance of a mediator. They pray

that the court gives him a lenient sentence considering that the accused committed the offence whilst drunk. Further the home environment is conducive for rehabilitation.

5. The report further reveals that the accused is thirty-three (33) years old. That he completed secondary school in the year 2013. That after completing his form four examination, he was recruited to join the Defence Forces and was still an officer at the time of his arrest.
6. That the accused has four (4) children from different relationships. That one child was from his previous marriage to one Halima Bakari, a military officer based in Nairobi, and the child lives with the mother while the second child aged ten (10) years old was born prior to his marriage and resides in the village. He also has two other children aged nine (9) years and

one (1) years old who resides with their mother who works with the Red Cross in Nakuru.

7. Further, that the accused has alcohol related problems that began while he was still in secondary school. That while there is no established instance that it has affected his work, he attributes it to his tendency of not keeping a wife for long.
8. The report further indicates that the accused is remorseful and accepts responsibility of the offence stating that it was not his intention to take the life of the deceased. That he understands the impact of his actions on the deceased's family and is willing to reconcile with them if given the opportunity.
9. That the community, described him as a footballer, an athlete and a respected military officer, well behaved and generally peaceful and that this is the first time they heard any charges of violent behavior from him.

They stated that the deceased was an active member of the community and that his services as a mechanic are greatly missed. That they note the seriousness of the offence and hope that both parties received justice and fairness.

10. The victim impact statement report indicates that the victim's both parents are dead. That he was forty-one (41) years old and the fifth born out of seven siblings.

11. That his family stated that they are in persistent grief and trauma and are still stressed by the circumstances of his death stating that the doctor's statement that it was "too late to save the deceased's life" still lingers freshly in their mind. That the accused threatened them after the incident which lead to anxiety and fear, though they never sought any protection or reported the alleged threats to the authorities.

12. The report further reveals that the deceased was married with two (2) children but he separated with his wife approximately three (3) years before his demise probably due to excessive use of alcohol. That his ex-wife moved away with the children and it is not clear if he was supporting the children as the ex-wife attended the burial his burial without the children. That the deceased's brother supports the deceased children by paying for their school fees and basic needs.

13. That the deceased was a technician and had set up a cybershop and had internet masts and in was stalling WIFI/Internet within Gilgil Town and surrounding suburbs. However, after his death the business was mismanaged and is on the verge of collapse affecting their livelihood. Further, his rural house in Maseno, Kisumu West was left incomplete.

14. The victim's family deny that the accused's family made any attempts at reconciliation and argue that it is now too late as reconciliation was overtaken by the court process. They request the court to consider the seriousness of the offence and seek for justice for the deceased.
15. In conclusion, the probation officer left the matter the discretion of the court taking into consideration all the circumstances of the case.
16. The accused in mitigation submissions reiterates what is stated in the pre-sentence report that save to add that he a serving officer in the Kenya Defence Forces demonstrating he is a disciplined individual and has been contributing positively to the society. He referred the court to the case of Bernard Kimani Gacheru vs Republic [2002] eKLR where the Court of Appeal stated that the court should take into account

an offender's character and antecedes and that first offenders are generally deserving of a more lenient sentence.

17. He further stated that he is the sole bread winner and caretaker of his family as his young children are wholly dependent on him for their upkeep, education and general welfare. In addition, he caters to his ailing mother medical requirements.

18. That the act that caused the death of the deceased was a single slap and that the deceased passed away one (1) month after the incident. That he had no intention to cause death or grievous harm and relied on the case of; Republic vs Andrew Mueche Omwenga (2009) eKLR where the Court held that where the cause of death was a single blow without malice a custodial sentence should be carefully weighed against the circumstances.

19. That in the case of Republic vs Nicholas Nyaga [2019] eKLR the court meted out a reduced sentence for a single fatal assault.

20. The accused further stated that the probation report is favourable indicating that he is amenable to rehabilitation, enjoys community support and poses no risk to society. Further he is young man and highly capable of reform and reintegration into the society. He relied on the case of; Republic vs Duncan Mwangi Wambugu [2016] eKLR where the Court emphasized that youthfulness is a significant mitigating factor indicating higher potential of rehabilitation.

21. The accused referred the court to the Judiciary Sentencing Policy Guidelines (2016) which states sentencing inter alia aims at rehabilitation, proportionality and restorative justice. In the

circumstances, a harsh custodial sentence would not serve the objectives.

22. He urged the court to take into account that he was in remand for a period of one (1) year. That under section 333(2) of the Criminal Procedure Code the court is obligated to take into account the period on custody when imposing sentence as emphasized by the Court of Appeal in the case of; *Ahamad Abolfathi Mohammed & Another vs Republic [2018] eKLR.* Finally, he pleaded for a non-custodial sentence or in the alternative a lenient sentence

23. In addition to the afore reports, the objectives of sentence under clause 1.3 of the Sentencing Guidelines (2023) the sentencing policy here below are considered.

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.

24. Similarly, the Supreme Court of Kenya in the case of *Francis Karioko Muruatetu & another v Republic [2017] eKLR* 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.

[72] We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency

in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process

25. The court has also considered that when the offence occurred, the accused and the deceased were both in the bar and drunk and disagreed over a lady in that bar. That the accused alleged hit the deceased once. Further there is no evidence of malice aforethought.
26. Furthermore, the deceased did not die instantly but a month thereafter and it is clear that he did not receive the proper treatment after the incident which could have saved his life. Be that as it was it is the blow to his head that caused the death as he is said to have felt dizzy and complained of headaches.
27. It is also undisputed that death is final in nature, the impact of death on immediate family members can be immense especially if he was a bread winner and in

his youth life. In this case, the employees depending on him lost their jobs escalating the impact of his death.

28. In considering a sentence to mete out the pain of the victim's family should never be down played as the accused may serve the sentence and move on with life, the deceased will never. The crime prevalence should be considered lest other members of the public believe it is easy to cause death and walk out to freedom.

29. It is against that background that I sentence the accused to serve fifteen (15) years imprisonment less (1) year spent in custody and possible remission.
Right of appeal 14 days explained

Dated, delivered, signed on this 30th day of March, 2026.

GRACE L. NZIOKA
JUDGE

In the presence of:

Ms Chepkonga for the State

Mr Kipkorir for the Accused

Accused present virtually

Hannah: Court Assistant