

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
HIGH COURT CRIMINAL CASE NO. E002 OF 2022

REPUBLIC.....

..... PROSECUTION

VERSUS

JOSEPH KAMAU MUTHUNGA.....

..... 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 9th March 2026, he was

found guilty of the offence of murder 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 accused family describe him as an introvert who is reluctant to open up and is self-reliant which often leave him under pressure. That he was over indulging in alcohol and was left him to find solutions himself. However, they pray for forgiveness from the court.
5. The report further reveals that the accused is forty-four (44) years old. That he completed secondary

school and in the year 2002 he started doing casual jobs until the year 2007 when he was recruited into the Kenya Police Administration. That he worked in various stations before being transferred to Akila Camp in Kedong ranch where he worked until the time of his arrest.

6. That he is married to Zaweria Muthoni and have two children aged 14 and 8 years old who are currently residing with the in-laws. That due to the nature of his job, the accused would visit his family monthly or when on leave.
7. The report reveals that the accused was an alcoholic who abused alcohol daily, which he claimed was due to marital issues. That he would miss duties and had been warned while stationed at Embakasi Training College but he did not change.

8. However, the accused is said to regret committing the offence. That at the time of the offence he had overindulged in alcohol, impairing his judgment and leading to being disarmed. That he had no grudge with the deceased but acted out of anger. Further, he has changed during the four (4) years he has been in custody and prays for forgiveness.
9. The community through the local administration of Raitha describes the accused as polite, hard-working and supportive of his family. They note that a life was lost and leave it to the court to make the right decision.
10. Further, his colleagues who were with him at Akila Camp describe him as a composed, hard-working and a team player but an introvert and was known for his alcoholism. However, they are still traumatized by his actions and pray that he should pay for the offence.

11. The victim impact assessment report notes that the deceased was married to Irene Achieng Polo a teacher and had one (1) daughter in class 8 at the time of the offence but is now in form four. That the family is psychologically and emotionally distressed as the death and memories of the deceased are still fresh and his grave a constant reminder of his death.
12. That the wife has been having sleepless nights, lost weight and has constant headaches which necessitate taking painkillers every day. That due to been a widow she has being isolated by friends and the community.
13. That financially, the family had to apply for loans to ensure his burial was done smoothly. Further, the daughter's high school was very expensive which she had to single-handedly cater for. Additionally, she

attended all court sessions throughout the trial travelling from Oyugis to Naivasha which was costly.

14. Further, she and her daughter received countable counselling sessions from the National Police Service and had to engage a private counsellor, which was financially draining. Furthermore, the deceased's mother states that she was very close her son and was affected by his death with the grave being a reminder that makes her sad.

15. That the deceased provided her mother with medical support as she has an eye problem and was to undergo surgery but has not being able to attend the clinics with the ophthalmologist. Furthermore, the deceased's siblings had to take full responsibility for his family.

16. In conclusion, the probation officer has left the matter to the discretion of the court taking into consideration all the circumstances of the case.
17. The accused in mitigation submissions states that he is a first offender and therefore the offence was not one of habitual criminality but an isolated, tragic incident. That he has no history of violence suggesting that the incident was not characteristic of his general disposition but rather an aberration fuelled by circumstances.
18. That he is profoundly remorseful and fully understands the anguish suffered by the victim's family and the void left. That nothing can undo the pain suffered and conveys his sorrow praying that one day they find comfort and healing.
19. That, he is the sole bread winner for his family and has two young children who entirely depend on him

for both emotional and financial support and his absence while remanded has subjected them to untold hardship with their guardians struggling to meet their daily needs.

20. Further, he is 43 years old and many productive years ahead of him which he can positively contribute to society as he is skilled in welding and fabrication and can therefore reintegrate into the society.

21. The accused submits that the recognized objectives of sentencing in law include punishment, deterrence, rehabilitation, and reintegration. That while punishment is inevitable the court has a constitutional duty to ensure rehabilitation and reintegration are meaningfully considered. That he has shown willingness and capacity to reform and therefore a wholly punitive sentence would serve little purpose.

22. That in addition, Article 50(2)(p) of the Constitution of Kenya 2010 provides that an accused is entitled to benefit from the least severe sentence, demonstrating that there is a constitutional expectation that sentencing should be tempered with proportionality and mercy.

23. The accused submits that he has been in custody since the year 2021 which is more than four (4) years which prolonged incarceration has acted as a form of punishment and should be considered pursuant to section 333(2) of the Criminal Procedure Code. He urges the court to exercise discretion judiciously and compassionately and to impose a lenient sentence for his sake and that of his children.

24. 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.

25. In the same vein, the case of Francis Karioko Muruatetu & another v Republic [2017] eKLR 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.

[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

26. To revert back to the matter herein, in considering the sentence to mete out, the court has considered the fact that the accused is a first offender, the mitigation offered and the contents of the pre-sentence victim impact assessment reports and referred to herein.

27. In addition, the circumstances under which the offence was committed are considered. It is notable that the deceased was killed in a cold blooded manner. The accused was noted to be drunk and incapable of handling a firearm and/or performing his duties.

28. That despite the accused being disarmed and allowed to stay behind as his colleagues went on duty and to get an opportunity to sober up and be able to pick up his duties and/or face any other disciplinary action

thereafter, the accused opted to confront the officer who had been given his gun, threatened to harm him if he did not give him his gun, and proceeded to take the gun forcefully from him.

29. It is clear that even as his colleagues pleaded with him to cool down and just go to sleep, the accused was determined to commit the offence and went for the deceased and killed in a cold-blooded manner.

30. As though that is not enough, the accused person seems to have gone berserk and on a killing spree. It is in evidence that his colleagues sensed that he could go for them and they had to run for their lives. It is clear that had they not escaped, we would have had more casualties. At this stage the question is; is the accused a person who can be released to the society without concrete evidence that he has fully reformed? Won't he be a danger to the members of the society?

31. Furthermore, it is in evidence that after he committed the offence, he hid the gun and escaped and was only arrested after the police laid an ambush. If the accused had sobered up that morning and realized that he had committed such a heinous offence and was remorseful would he have run away or surrendered himself.

32. It is reported that he pleads for the least punitive sentence pursuant to Article 50 of the Constitution of Kenya and that he be allowed to re-integrate into the society. But the deceased? Isn't it a fact he is gone and gone. What of the tremendous loss suffered by his family? Notably the deceased was 41 years in his prime years in life and his death is permanent. Moreover, they may never be adequately compensated financially for the loss.

33. It is the finding of this court that the accused committed a heinous offence he has to pay for. It is must be remembered no amount of punishment can restore lost life. However, a deterrence sentence is called for.

34. In the given circumstances, I sentence the accused to serve forty (40) years' imprisonment and the same shall be reduced by the four (4) years he has been in custody. Right of appeal within 14 days explained.

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

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Chepkonga for the State

Ms. Karaho H/B for Mr. Wairegi for the accused

Accused present virtually

Ms. Hannah: Court Assistant