



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI COUNTY

COURT NAME: MAKUENI HIGH COURT

CASE NUMBER: HCCRC/E023/2025

REPUBLIC VS CHRISTOPHER MUNGUTI MAUNDU

RULING

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
MAKUENI CRIMINAL CASE NO E023 OF
2025
REPUBLIC
C
VERSUS
CHRISTOPHER MUNGUTI MAUNDU
.....**ACC**
USED

SENTENCE ON PLEA OF GUILT

- Christopher Munguti Maundu** was charged with **Murder Contrary to Section 203 as read with Section 204** of the **Penal Code**.

The particulars were that on 17/10/2025 at Kalii Village, in Taandu Sub-County, Makueni County, he murdered his father Julius Maundu Ndunda.



2. He was represented by Mr. Muthui Advocate .
3. When the charge was read and explained to him on 19/12/2025 he pleaded guilty.
4. The court took its time to explain to him and to warn him of the consequences of pleading guilty to a charge of murder.
5. The charge was read over and explained to him, afresh, in Kikamba. He pleaded guilty again, by saying “*niw’o*”. (It is true)
6. His advocate submitted that since the charge had been read to his client twice, and he had pleased guilty, the facts could be read to him.
7. The facts were read to him.
8. That on 17/10/2025 the Accused was at home with his father Julius Maundu. The Accused took a jembe and attacked his father causing him injuries on the head, abdomen, and left him in a pool of blood, and headed to the nearest shopping centre.
9. One, Onesmus Musembi, brother to the deceased and uncle to Accused saw the accused attack his father, and leave. He (Onesmus) told the brother to Accused, one Pius Musyoka Maundu who went and found his father lying in a pool of blood.
10. Pius went looking for the accused and found him. He bought him food, and the accused while eating the food, Pius asked him about the incident. Pius said that accused told him “*Dawa ya mchawi ni kuuu*”. (The medicine for a witch is to kill him). Pius then mobilized people and family members who arrested the accused, took him back home where he was tied up with ropes.
11. The matter was reported to DCI Makueni who came to the scene, processed the scene, took the body of the deceased away to Makindu Hospital Mortuary for preservation and accused was escorted to Makindu Police Station.
12. The postmortem was later conducted by Dr. Jane. It indicated that deceased was 80 years old. He had a soft tissue injuries on the head and neck and below the knee Soft tissue injuries on neck and chest, 5 ribs fractures on the left rib case, 3 rib fractures on right rib cage, rapture spleen, massive hemorrhagic ascities, massive subdural hematoma with massive hemorrhage, fracture of left arm – humerus, right TF (tibia-fibula) fracture. The doctor determined the **Cause of death to be** Cardiovascular failure 2° massive subdural hemorrhage and organ rapture (spleen) 2° to murder. (2° means secondary to)
13. The postmortem report was produced as PEX1.



14. Thereafter witness statements were recorded, the Accused was charged with murder.
15. The Accused pleaded to the facts by confirming that the facts as read by the prosecutor were true. The accused was convicted on his own plea of guilt.
16. The prosecutor, Mr. Kazungu told the court that the Accused was a 1st accused.
17. The Accused in his mitigation told the court in Kiswahili:-
“Wakati niliua Babangu Kichwa yangu ndio ilikuwa mbaya. Tulikuwa tukikunywa sisi wawili na mimi ndio nilienda sokoni kuambia watu mimemua. Nilijua nikiwa Makindu nikiwa hospitalini nikiongezwa maji; kuwa nimemua.” (*When I killed my father, my head was not ok. We were drinking just the two of us . I am the one who went to the market to tell people that I had killed him. I realised I had killed him while at Makindu hospital where I was being infused with water*).
18. Mr. Muthui on his part told the court that the Accused told the court that he and his father were taking alcohol, which reduced his control. That the Accused had mental instability, with intermittent lucid periods. That he became aware of the incident while in hospital. That there was no pre-determination on his part to commit the offence. He sought the mercy of the court on behalf of the Accused.
19. To enable the court deal with the issue of sentence the court sought a pre-sentence report from PACS.
20. I have carefully considered the circumstances and facts of this case.
 1. **Was there evidence that the accused was suffering from a mental illness at the time of the offence?**
 2. **What sentence is suitable in the circumstances?**
21. The report from the psychiatrist dated 27/10/2025 showed that the Accused told the psychiatrist he had no recollection of the offence. It also indicates that his mood, perception, memory were marked as abnormal.
22. The psychiatrist recommended a re-evaluation in the presence of a relative.
23. The 2nd report dated 15/12/2025 indicated that the Accused was fit to plead/stand trial. The mental status was now indicated as normal. There was no noted mental illness.



24. The PACS report speaks about mental illness of the Accused's mother



and the Accused and the Accused seeking treatment after he exhibited violence towards his mother's sister, and a neighbour. However, there is no diagnosis of any existing mental illness on the part of the Accused. During the plea and thereafter he did not produce any treatment notes, or hospital records to demonstrate that he actually suffered from a mental illness.

25. In addition, the psychiatrist who examined him for purposes of determining his fitness to stand trial did not indicate that the Accused was suffering from any mental illness.

26. Section 11 of the **Penal Code** provides for presumption of sanity.

That even person is presumed to be of sound mind, and to have been of sound mind at any time which comes with question, until the contrary is proved.

27. It is the offender who alleges mental illness/unsoundness of mind. It is upon him to prove the same.

28. Section 12 of the Penal Code provides for the defence of insanity.

It states;

*A person is not criminally responsible for an act or omission **if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission. (Emphasis added)***

29. The offender through the PACS report availed a hospital card that shows that on 6th August 2025 the accuse attended 'mental clinic'. That is all . Unfortunately, this document does not provide the requisite evidence to the court that the accused was suffering from a debilitating disease of the mind as described by the provisions of s. 12 of the Penal Code.

30. This evidence was necessary in light of s. 11 of the same Act which



states:

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.



31. Evidently it was upon the offender , and the prosecution if they had that evidence, to show that the offender was of unsound mind at the time he committed the offence. Granted, that in his mitigation, the offender said that his head was not ok when he committed the offence. Further, according to the PACS report, the family mentioned that the offender’s bouts of anger and aggression were accompanied by accusations of witchcraft against the family members, and that he made similar accusations against his father. In addition, the PACS officer wrote in great detail about the offender’s alleged mental illness, but did not provide any evidence of the alleged treatment hence presenting nothing to support the claim. That besides that **Section 12**

provides that the defence of insanity will not be applicable in a case where an accused’s mind may be affected by disease and such disease does not produce upon his mind the effect of making him incapable of understanding what he is doing. In this case, the offender appears to have been aware of what he was doing and after committing the offence left the home for the market where he was found by his brother whom he told that “*dawa ya mchawi ni kuua*”- that the way to deal with a witch, is to kill the witch.

There appears to be consistency in the witchcraft allegations against members of his family and in this case against the deceased in particular. From what the offender told his brother, he appears to have decided that he needed to get rid of his father the *mchawi*. He did so by killing him. He admitted to this fact on his own volition.

In his mitigation he stated that he was drinking together with his father when he took the jembe and struck him severally. He left him in a pool of blood. This presents as a case of cold blooded murder of the father.

It would appear that the act caused the offender to suffer temporary amnesia. This is evident from the psychiatrist’s examination as to whether the offender was fit to plead. The offender told the doctor that he had no memory of the offence.

In the PACs report the Probation officer states

“ Considering the Mental Health Act Cap 248 part 2C (f) which recognizes community and family based programs as care for persons suffering from mental health disorders and the Kenya Mental Health Policy 2015 to 2030 part 2,2.1(7) which acknowledges



Correctional Services as part of a multi



sectoral approach to addressing mental health issues, we therefore recommend that that the accused be referred to Mathari Teaching and Referral Hospital for psychiatric management and subsequently placed under three years of probation supervision and rehabilitation. However this recommendation is subject to the final decision of this honorable court”

Section 2C. of the **Mental Health Act** provides for the Obligations of

National Government: It states

***The National Government shall (inter alia)
(f) develop community-based programmes for the continued care and rehabilitation of persons with mental illness;***

Kenya Mental Health Policy 2015 to 2030 provides at 2.1 the that

guided the development of the National Mental Health Policy and which should guide its implementation: Principle no 7. States:

Multi-Sectoral approach to maximizing achievement of mental health goals

*A multi-sectoral approach is based on the recognition that mental health cannot be improved by interventions relating to mental health services alone, but that other related sectors are equally important in attaining the overall health goals. A focus of ‘Mental Health in all Sectors’ should be applied in attaining the objectives of this policy. Such related sectors include: Education, labour, security, **correctional services**, children services, planning, finance, legal justice system, industrialization, agriculture.*

I appreciate the sentiments of the PACS officer . But no evidence is provided to demonstrate any community based programme available for persons with mental illness. The court would not hesitate in appropriate cases to place suitable offenders into those.

In this case the offer recommends that the accused be committed to Mathari Teaching and Referral hospital. Such a recommendation can only come from the Psychiatrist, upon examination of the accused and upon diagnosis that requires such an admission. In this case no such



recommendation has come from the psychiatrist to warrant a committal order from this court. There is no evidence that even after the plea proceedings that the accused has exhibited a mental illness



that requires that kind of order.

Hence the commendation by the PACS Officer based on the Mental Health Act is not supported by any evidence by the accused, or the pretrial Psychiatric examination or any other evidence that at the time of the offence he was of unsound mind.

In the circumstances, I find the recommendation untenable in light of the facts.

What sentence?

Section 204 of the Penal Code provides that the sentence for murder is death. **Muruatetu 1** took away the mandatory nature of the death

sentence and gave the trial court the discretion to determine the appropriate sentence according to the circumstances of each case.

In his case the family of the Accused are not ready to receive him at home. They believe that he has a mental illness however there was no such finding by the psychiatrist. The accused would require a further examination and if he indeed suffers from a mental illness then treatment is his right whether incarcerated or not.

In arriving at the sentence, I find persuasion in the following cases:

[Republic v Wambia & 4 others \[2025\] KEHC 10406 \(KLR\)](#) where the court stated :

I have considered the guidelines in our Sentencing Policy; the key principles as follows;

Deterrence- Discouraging the accused and others from committing similar crimes.

Rehabilitation- Enabling the accused to reform and become a law-abiding citizen.

Retribution- Punishing the accused justly for their actions.

Community Protection- Safeguarding society by incapacitating the accused.

Restorative Justice- Addressing the harm caused by the crime and finding ways to repair it.

Proportionality- Ensuring the punishment fits the crime.

Factors to consider whilst sentencing are;

Gravity of the offense: The severity of the crime and its consequences.

Motive and circumstances: The reasons behind the crime and the context in which it occurred.

Accused's background: Age, prior criminal record, and any



mitigating factors.

Victim impact: The harm caused to the victim and their needs.

Social impact: The effect of the crime on the community.

Possibility of rehabilitation: The likelihood of the accused reforming. (emphasis mine)

I have just like the court in [Republi c v Gin a & another \[2024\] KEHC 7874 \(KLR\)](#) considered what the Supreme Court [Francis Karioki Muruatetu](#) set as the factors to be considered in sentencing in murder cases to include the following:-

- (a) Age of the accused;
- (b) Whether the convict is a first accused;
- (c) Whether the accused pleaded guilty;
- (d) Commission of the offence in response to gender based violence;
- (e) Character and record of the accused;
- (f) Remorsefulness of the accused;
- (g) The possibility of reform and social adaptation of the accused;
- (h) Any other factor that the court considers relevant.

This is a first accused. He has pleaded guilty to the offence. He is remorseful.

I have noted the sentences in the foregoing mentioned cases and others for murder.

The accused is sentenced to **25 years imprisonment.**

Right of Appeal 14 days .

I hasten to add that should the accused be found to suffer from a mental illness that requires treatment while in custody, the Prison authorities are obligated to ensure he gets the requisite treatment.

Dated, signed and delivered virtually this 9th April 2026

MUMBUA T. MATHEKA
JUDGE

Accused present virtually from Makueni Main Prison

Court Assistant – Chrispol

Court Prosecutor – Ms. Musango



Mr. Muthui for the Accused

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SIGNED BY/FOR:
LADY JUSTICE MATHEKA, TERESIA MUMBUA



★ THE JUDICIARY OF KENYA ★
**LADY JUSTICE
MATHEKA, TERESIA
MUMBUA**
Makueni High Court
High Court Div
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