



**Republic v Nyairo & 2 others (Criminal Case 5 of 2016)
[2026] KEHC 4559 (KLR) (4 March 2026) (Sentence)**

Neutral citation: [2026] KEHC 4559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 5 OF 2016
DO CHEPKWONY, J
MARCH 4, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

RONALD NYAIRO 1ST ACCUSED

DAVID NJUGUNA MBUGUA 2ND ACCUSED

ROSELYN KARAMBU 3RD ACCUSED

SENTENCE

1. The Accused persons, Ronald Nyairo, David Njuguna Mbugua and Roselyn Karambu were found guilty and convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code vide Judgment delivered on 14th January, 2026. The offence is particularised in the charge sheet as follows;

“On the night of 4th and 5th June, 2014 at Regen area in Kinoo within Kiambu County, the accused person murdered Paul Kibisu Musalia.”

2. Upon finding the accused person guilty, convicted them for the above cited offence, the court then called for a social inquiry to be conducted on each accused person and for a pre-sentence report to be filed by the probation and after care services department. The Pre - Sentence Reports on each accused were then filed on 10th February, 2026. According to each report, it has been indicated that the probation Officer considered each accused persons’ family background, their personal history, circumstances of the offence, attitude towards the offence, view of the victim’s family, community’s attitude towards the offenders and the offence incoming up with respective recommendations.



3. On 11th February, 2026, I conducted sentencing proceedings whereby I listened to submissions from the prosecution's counsel, M/S Muriu and learned counsel for the accused persons, M/S Omungala and M/S Fundi.
4. I have considered the facts and circumstances under which the offence was committed and they are to the effect that on the fateful night, the deceased was picked from his house by the accused persons on allegation that he had stolen a Television Set and was to lead them and others where he had kept it. The deceased was never seen alive again until his dead body was found at the city mortuary.
5. On previous records, M/S Muriu, the Prosecution's Counsel stated that none of the accused had any criminal record and as such they could be treated as first offenders. However, on sentencing, she urged the court to take into account the grave nature of the offence, consider the circumstances surrounding the case and ensure justice for the victims and his family.
6. In mitigation of the 1st Accused person's Counsel, Mrs Omungala stated that the accused is a family man with a wife and children who he owes parental duties. She stated that he also takes care of his parents as captured in the presentence report. Counsel mitigated that the 1st accused is sympathetic to the loss of life but still maintains his innocence in the matter. In further mitigation, the 1st accused person sought for forgiveness of court and prayed that he be granted a non-custodial sentence. He told court that he had never committed an offence for the 12 years he has been out on bond.
7. Mrs Fundi, Counsel to the 2nd and 3rd Accused persons stated that in reliance on the decision in the Muruatetu's case, the mandatory death sentence was rendered unconstitutional and urged that the court should be guided by discretion and mitigating factors in passing sentence. She stated that the conviction of the accused persons was based on the 'last seen' theory which is circumstantial evidence. She then urged the court to step aside and consider the personal factors in accordance with the principles of sentencing being retribution, deterrence, rehabilitative and protection of society. She stated that the 2nd and 3rd Accused persons are husband and wife who were arrested way back in 2015 and have been attending court without absconding. She also stated that both are of and responsible parents to their two minor children who have been spoken well of by church and community leaders. Counsel went onto submit that they are remorseful and apologetic to the victims family for the loss of life and had reached out to the deceased's family to get justice for the deceased. She urged the court to grant the 2nd and 3rd accused a non- custodial sentence in the interest of their children.
8. In further mitigation, the 1st accused sought for forgiveness of the court and prayed for a non-custodial sentence. Eh submitted that he had not breached any law for the 12 years he had been out on bond. He said that the situation had caused the death of one of his parents.
9. The 2nd accused mitigated further that he should be released to go and take care of their children as his mother is too old to take care of them.
10. The 3rd accused also sought to be released as she never committed the offence. She told court that she was a Christian and has learnt a lot on how to live with people in custody where she has been undertaking a course in

Theology.

11. In summary, the accused persons and their counsel are pleading for leniency for them to start a new chapter on life.



Analysis and Determination

12. I have read through the respective presentence reports on each accused person dated 10th February, 2026 and find that the probation officer, Beatrice Kagwiria having analysed her findings on each accused person, has recommended that the court considers a non-custodial sentence, which is community based supervision to allow for structured and continuous monitoring, guidance, social re-integration, rehabilitation and counselling interventions.
13. For the 1st accused person, the probation officer's were based on his family responsibilities, community support and absence of reported violent tendencies.
14. The probation officer established that the 2nd accused person presented a socially grounded individual with strong family and community support but required counselling and continuous monitoring and guidance.
15. The 3rd accused, Roselyn Karambu Ngatu is a wife to the 2nd accused person was recommended for a non-custodial sentence by the probation officer because of the need to address criminogenic needs such as anger management issues and lack of her emotional control which had been identified in her during the interview and require highly intensive counselling sessions and close monitoring.
16. With the enactment of the Victim's Protection Act, the views of the victim's family at the stage of sentencing are very significant. It is worth noting that the deceased was living with his seven (7) year old son and sister at the time of his death. The accused persons were identified as the people who went to pick him from his house claiming that he had stolen a Television Set. The three accused persons were later identified by the sisters of the deceased as having gone to inform them that they had killed their brother for stealing a Television Set and asked them to go and collect his belongings and child from the house he had rented from the 2nd and 3rd accused persons. I find this action reckless and remains the aggravating factor in the entire incident. The court was also implied to take into account the impact of the deceased's death on his family especially his son who was of tender age at the time of his demise.
17. The offence of Murder is a serious and grave offence for which the law under Section 204 of the Penal Code provides for a death sentence as the penalty. However, following the Supreme Court's decision in the case of Francis Karioko Muruatetu and Another v- Republic & Others[2015]eKLR, the mandatory nature of the sentence was declared unconstitutional and the courts were urged to take into account mitigating circumstances from the facts of a case and the offender in determining the appropriate sentence to mete against a person convicted for the offence of Murder. It based this on the sense of whether or not a convict can be heard. The Supreme Court felt that a person facing a death sentence deserves to be heard in mitigation because of the finality of the sentence as an important cognizant element of fair trial. The Supreme Court stated:-

“We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigation factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise, will render a trial with the resulting sentence under Section 204 of the Penal Code unfair thereby conflicting with Articles 25(c), 28, 48 and 50(1) and (2) of *the Constitution*”.
18. It is in compliance with this that a social inquiry of the accused was called for and accused persons called upon to mitigate for a consideration alongside the victim's and community's views of the offence.



19. However, the death penalty was not outlawed as it remains in our penal system. It is therefore upon the courts to exercise discretion and impose lesser sentence depending on mitigating factors/circumstances of a case. The Court of Appeal in the case of Charo Ngumbao Gugudu v R (2011) eKLR, held as follows:
- “Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence.”
20. Indeed, the Supreme Court of Kenya issued amended guidelines in the Muruatetu Case(supra) when it listened age of the offender, 1st offender status, character and record of the offender, remorsefulness and possibility of reform and social adaptation as material consideration in sentencing process.
21. The Judiciary Sentencing Guidelines recognize the principle objectives of sentencing as retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation. The guidelines also state that the provisions of Section 333(2) of the Criminal Procedure Code obligate the courts to take into account the time already served in custody as failure to do so may result into excessive and disproportionate punishment.
22. In South African case, S v- Tsotetsi 2019(2) SACR (WCC) at [29], Myburgh, A.J. formulated basic principles pertaining to sentencing as follows:-
- a. “The sentence must be appropriate based on circumstances of the case. It must not be too light or too severe.
 - b. There must be an appropriate nexus between the sentence and the severity of the crime, full consideration must be given to all mitigating and aggravating factors surrounding the offender. The sentence should thus reflect the blameworthiness of the offender and be proportional.
 - c. Regard must be had laid to the interests of the society. This involves a consideration of the protection society so desperately need. The interests of society are reflected in deterrence, prevention, rehabilitation and retribution.
 - d. Deterrence, the important purpose of punishment, has two components being both deterrence of the accused from re-offending and the deterrence of would be offenders.
 - e. Rehabilitation is a purpose of punishment only if there is the potential to admit it.
 - f. Retribution, being a society’s expression of outrage at the crime, remains of importance. If the crime is viewed by society as an abhorrence, then the sentence should reflect that. Retribution is also expressed as the notion that the punishment must fit the crime.
 - g. Finally, mercy is a factor. A humane and balanced approach must be followed.”
23. Therefore, in sentencing, a court must balance between condemning the offender under the constitutional right while remaining just and measured so as not to trivialize the serious nature of the offence nor extinguish the possibility of reform. It should reflect the seriousness of the offence, vindicate the victim’s death, serve the purpose of deterrence of punishment while at the same time reflect on the facts and circumstances of the case.
24. In the particular case, I have taken note of the circumstances of the offence as presented during the trial. I have also taken note of the positive recommendation on each accused person by the Probation Officer



based on the interviews conducted with their families, the prisons services and community. It is noted that the accused person have since reformed and are suitable to be reintegrated back into the society.

25. I have also taken note of the sentiments of the victim's family who are said to have hoped for a reconciliation with the accused persons but this did not materialize and so they pray that justice prevails.
26. In view of the findings by the Probation Officer and circumstances of the offence, I find that in as much as the accused persons by themselves and through their counsel seek for a lenient sentence, it is clear that despite having been found guilty of the offence of murder from the evidence that was presented to the court, they appear not ready to take responsibility for the death of the deceased. There is need for justice to be seen to be done for the victim and his family over the loss of his life in circumstances that were clearly senseless. It has been reported that the accused persons have been rehabilitated and or reformed but it is not clear how this was determined. They have been out on bond during the trial process. Clearly, I have not had a proper appreciation of whether the accused persons are genuinely remorseful of what happened to the deceased or appreciated the consequences of the actions that they appear to be feeling sorry for themselves.
27. Also, of worth noting although 2nd and 3rd accused persons have pleaded for a non-custodial sentence on the ground that their children will suffer if they are imprisoned, there is need to consider justice for the son of the deceased whose father was taken away from him at a tender age, never to be seen alive again.
28. Having considered the circumstances under-which the deceased met his death, the records of the accused persons, their respective mitigating statements alongside the findings and recommendations by the Probation Officer in the pre-sentence report, I find that even though the Probation Officer has recommended non-custodial sentences for the accused persons, the same would amount to trivializing serious and violent actions which had led to the loss of the deceased's death for unconfirmed reason. Justice must be seen to have been served for all and in this case, this can only be through a custodial sentence being meted against the accused persons.
29. I accordingly proceed to sentence the 1st and 2nd accused persons to serve fifteen (15) years imprisonment each. And in accordance with the provisions of Section 333(2) of the Criminal Procedure Code, any period spent in remand custody from the date of their respective arrest (but excluding such period when they were out on bond) shall be deducted from their respective sentences.
30. As for the 3rd accused person, I have considered her relationship with the 2nd accused person from the mitigation statements and findings in the pre-sentence report, and in exercise of this court's mercy for their young children who deserve care and protection of their parents, proceed to place her on Probation for a period of three (3) years on condition that:-
 - a. The 3rd accused shall maintain good behavior, law and order during the period of probation.
 - b. The 3rd accused shall submit to the regular supervision of the assigned Probation Officer for the duration of the order.
 - c. The 3rd accused shall provide truthful and accurate information to the Probation Officer about her place of abode, family etc, at all times.
 - d. The 3rd accused shall attend to guidance and counselling sessions as will be arranged by the supervising Probation Officer.
 - e. Failure to abide by the above conditions, will render the Probation Order cancelled and the 3rd accused will be arraigned before court and a custodial sentence passed against her.



It is hereby ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 4TH DAY OF MARCH , 2026.

D. O. CHEPKWONY

JUDGE

In the presence of:-

Mrs. Omungala counsel for the 1st accused

M/S Fundi counsel for the 2nd and 3rd accused persons

Accused - present

Court Assistant – Sakina/Martin

