



**Prosecution v Eliakim alias Mzito (Criminal Case 56 of 2023)
[2025] KEHC 3796 (KLR) (27 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3796 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 56 OF 2023
DR KAVEDZA, J
MARCH 27, 2025**

BETWEEN

PROSECUTION REPUBLIC

AND

PHILIP MAKAYA ELIAKIM ALIAS MZITO ACCUSED

SENTENCE

1. The accused, Philip Mayaka Eliakim alias Mzito, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence indicate that on the night of 6th and 7th March 2021, at the Gatwekera area in Kibera Sub-County, Nairobi County, the accused murdered Annah Otieno alias Flora alias, Mama Diana.
2. On 12th February 2025, this Court found the accused guilty of murder and duly convicted him. The Court subsequently directed the probation officer to file a pre-sentence report.
3. Ms. Maina submitted that the report was unfavourable. She stated that the accused had perpetuated gender-based violence against the deceased for 20 years, culminating in femicide. Furthermore, the accused demonstrated no remorse, attributing his actions to alcohol consumption and provocation due to a message sent to his wife by another man. She also highlighted the accused's arrogance, evidenced by his immediate marriage to a woman with whom he had been having an affair. Additionally, the accused abandoned the deceased in the hospital as an unidentified patient, and the prosecution argued that this warranted a life sentence. The community also needed protection from the accused, who was described as rude, arrogant, and a known drug peddler selling bhang to the youth.
4. Ms. Nyamongo rebutted the claims in the pre-sentence report. She contended that arrogance is subjective and difficult to measure and that the report unfairly portrayed the accused based on community sentiment. She argued that there was no evidence to support allegations that the accused's house was a hub for illegal alcohol and drug sales, as no reports had ever been made to the police.



Furthermore, she refuted claims that the accused abandoned his wife at the hospital, asserting that he became confused when asked for identification documents and subsequently reported the matter to Kilimani Police Station. She submitted that the accused did not premeditate the murder and was mentally distressed. In an effort to reconcile with his in-laws, he had purchased two cows and expressed willingness to buy more. Consequently, the defence sought a non-custodial sentence.

5. Upon reviewing the pre-sentence report, it is evident that the convict was under the influence of alcohol and bhang at the time of the offence. The probation officer noted that the convict frequently consumed alcohol from his business stock at home, often with the deceased. Although he is HIV-positive, he is not on medication due to his continued use of alcohol, cigarettes, and bhang.
6. Regarding his attitude towards the offence, the convict expressed regret but attributed his actions to intoxication and the victim's alleged provocation. The community remains hostile towards the convict and strongly opposes a non-custodial sentence. Community elders informed the probation officer that the convict was rude and arrogant and had disregarded their advice to cease drug peddling, which was negatively affecting the youth.
7. The probation officer concluded that the convict posed a high risk of reoffending, given his longstanding aggression towards the deceased throughout their marriage. Additionally, rather than accepting responsibility, he continued to blame alcohol and the victim.
8. After considering the submissions of both the prosecution and the defence, as well as the pre-sentence report, it is clear that even after his wife's death, the convict has not ceased his harmful habits. Instead, he has expanded his drug trade by selling bhang to the youth.
9. PW1 testified that upon learning of her mother's injuries, she visited the house and found bhang, while her father appeared intoxicated. The fact that the convict has not abandoned the behaviours that likely contributed to his actions reinforces the probation officer's assessment that he is at risk of reoffending. The heavy consumption of alcohol and bhang impairs judgment and increases the likelihood of similar offences.
10. Furthermore, the convict made no meaningful attempt to reconcile with the deceased's family. Instead, he married a woman with whom he had fathered a child during his marriage to the deceased. While his counsel argued that he had purchased two cows for the victim's family and intended to buy more, this appears to be an afterthought prompted by the pre-sentence report. He had ample opportunity to make amends, particularly considering that he abandoned the deceased in the hospital as an unidentified person, yet he failed to do so.
11. In light of the foregoing, I am not persuaded that the convict merits a non-custodial sentence. Although the deceased's family has urged the Court to impose a life sentence, recent jurisprudence suggests a shift in sentencing approaches.
12. In the case of *Julius Kitsao Manyeso v Republic* – Criminal Appeal No. 12 of 2021, the Court of Appeal expressed itself as follows;

“We note that the decisions of this Court relied on by the Appellant, namely *Evans Wanjala Wanyonyi v Rep* [2019] eKLR and *Jared Koita Injiri v Republic* Kisumu Crim. App No 93 of 2014 were decided before the Supreme Court clarified the application of its decision in *Francis Karioko Muruatetu & another v Republic* [2021] eKLR and limited its finding of unconstitutionality of mandatory sentences to mandatory death sentences imposed on murder convicts pursuant to section 204 of the *Penal Code*. This fact notwithstanding, we are of the view that the reasoning in *Francis Karioko Muruatetu & Another v Republic*



[2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation when those facing lesser sentences are allowed to be heard in mitigation. This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under Article 27 of the *Constitution*. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under Article 28, and we are in this respect persuaded by the reasoning of the European Court of Human Rights in *Vinter and others v The United Kingdom* (Application nos.66069/09, 130/10 and 3896/10) [2016] III ECHR 317 (9 July 2013) that an indeterminate life sentence without any prospect of release or a possibility of review is degrading and inhuman punishment, and that it is now a principle in international law that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”

13. The upshot of the foregoing is that the higher Courts have now released Courts from the yoke of being confined to imposing mandatory minimum and maximum sentences without discretion.
14. I therefore sentence the convict, Philip Makaya Eliakim to thirty (30) years imprisonment. The convict was in custody from 24th May 2021 the date of his arrest to 24th October 2022 when he was released on bail. He therefore spent one (1) year and five (5) months in pre-trial custody. The sentence shall be computed less the days the accused spent in pre-trial custody pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE

In the presence of:-

Ms. Nyamwenya for the Accused

Accused Present

Ms. Njoroge for the State

Tonny Court Assistant

