



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Muchanga (Criminal Case 1 of 2020)  
[2025] KEHC 4949 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4949 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE 1 OF 2020  
GL NZIOKA, J  
MARCH 26, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KEZIAH WAMBUI MUCHANGA ..... ACCUSED**

**JUDGMENT**

1. By an information filed in court dated 8<sup>th</sup> January 2020, the accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya.
2. The accused pleaded not guilty to the charge when read out to her. Subsequently, the case proceeded to full hearing. The accused was placed on her defence at the close of the prosecution and at the close of the entire case, the court delivered a judgment dated 20<sup>th</sup> January 2025 wherein she was acquitted of the offence of murder but found her guilty of the offence of manslaughter and convicted accordingly.
3. The court then called for the accused's records and pre-sentence report. Thereafter, the prosecution presented the accused's records indicating that she is a first offender. In the same vein, a pre-sentence report dated 17<sup>th</sup> February 2025 was availed.
4. The defence then filed the submission on mitigation and submitted that the accused is remorseful and accepts she should have been more careful nursing the deceased. That she did not intend to kill the deceased but acted out of ignorance and negligence.
5. Further, that at the time of the offence she was facing significant personal challenges such as poverty, mental health issues, and lack of social support. In addition, due to her limited education, she was not fully aware of the deceased's nutritional needs.



6. The accused pleaded for leniency, stating that she fully cooperated during investigations and the trial. Furthermore, that she is the primary caregiver of her two other children who are currently living with a relative.
7. She urged the court to consider a non-custodial sentence or a reduced custodial sentence to enable her continue caring for her other children as her absence will place an additional burden on a strained family structure. Further that she has been in custody from the time of her arrest and she is willing to comply with any conditions issued by the court.
8. However, the prosecution in response submissions dated 6<sup>th</sup> March 2025, cited clause 3.1 of the Sentencing Policy Guidelines (2023) that sets out the objectives of sentencing.
9. In addition, the case of Francis Karioko Muruatetu & another v Republic [2017] eKLR was cited where the Supreme Court of Kenya gave guidelines on mitigating factors to be considered when sentencing an accused over the offence of murder.
10. The prosecution argued that although the pre-sentence report is positive and recommends a noncustodial sentence, however, there were aggravating circumstances that counts against a non-custodial sentence.
11. That a life was lost as a result of the accused neglecting her parental responsibility by failing to provide the deceased with food instead choose to go to the bar overindulging in alcohol. That the deceased did not deserve to die in that manner.
12. The prosecution submitted that the sentence to be imposed ought to be commensurate with the blameworthiness of the accused as held by the High Court in the case of Ambani vs Republic (1990) KLR 161.
13. That it is in the interest of justice that the court should impose a retribution and deterrence sentence that will allow the accused an opportunity to be rehabilitated and deter potential offenders.
14. Further consideration of the presentence report indicates that both the accused's parents are deceased and she is the last born out of six (6) children though three (3) siblings are deceased.
15. That she completed her secondary education in the year 2007 and thereafter was sponsored to undertake a Human Resource 2 course at Kenya Institute of Business Studies. That after completing her studies, she worked at her aunt's timber yard at Flyover before relocating to Nairobi where she worked as a casual labourer at Vage Pro Company.
16. That while at Nairobi she married Ambrose Kiluyi Murilo and they were blessed with three (3) children, including the deceased. However, the accused and her husband disagreed on a number of issues and in 2018, the accused separated from her husband and children. That when she left and relocated to Maraigushu she was pregnant with the deceased and went to live with her maternal grandmother
17. That soon after the birth of the deceased, the accused grandmother passed away, and the accused relocated to Karagita where she started cohabiting with a man and doing casual jobs.
18. According to the report, the accused started indulging in alcohol while in college but stopped when she got married. However, she relapsed after the death of her grandmother and moving to Karagita where she associated with people who were overindulging in alcohol.
19. The report indicates that the accused states that she is remorseful and that the five (5) years spent in custody has helped her reflect on her responses to challenges and the negative impact of indulging in



- alcohol and has vowed not to use it again. That she prays for leniency and a second chance as she has not seen or spoken to her two children since she went into custody.
20. That the accused's sister prays for a non-custodial sentence stating that she is willing to accommodate her and come up with an empowerment plan to assist her earn a living.
  21. Further, the deceased's father, who is also the accused ex-husband, stated that he forgave the accused and had healed from the demise of the deceased. That he vouched for a non-custodial sentence saying that he believes the accused has learnt her lesson during the five (5) years she has been in custody. Further, their other two children need motherly love as they keep asking about the accused's absence, and he assured them that the accused would return.
  22. That the community and local administration was not opposed to the accused's release on a non-custodial sentence, stating that apart from overindulging in alcohol, the accused did not have any reports of misconduct within the community.
  23. The report notes that during the time spent in custody, the accused does not have any reports of misconduct. That she has undergone religious training and obtained a diploma in biblical studies from AFCM International Training, certificates in family life and health education from Voice of Prophecy among other certificates.
  24. Further, she has completed a diploma course in Trial Advocacy and Paralegal Training from Justice Defender. Furthermore, she has completed coursework for Paralegal Training offered by Strathmore Paralegal Training and is awaiting graduation.
  25. Ms. Njeri E. Kahumba, the Probation Officer, was of the opinion that the accused was fit for a non-custodial sentence and recommends a probation sentence with interventions to be implemented with a supervision plan with particular intervention on how to cope with challenges, her link to peers and indulgence in alcohol. Further, there be follow-up supervision through the Directorate of Children Services to ensure her welfare and psycho-social support if she reunites with the other children.
  26. I have considered the afore summarised submissions, the records of the accused noting that, she is a first offender and the views in the pre-sentence and victim impact assessment report.
  27. In the same vein I have considered the law on sentencing and I note that, sentencing is central task of administration of justice by a court of law. In that regard clause 4.6.1 of the Sentencing Guidelines (2023) provide inter alia that; the sentencing process forms part of the trial and is therefore subject to the fair hearing constitutional guarantees.
  28. The Supreme Court of India in the case of, Antony Pareira V State of Maharashtra (2 AIR 2012 SC 3802) held that stated that
    - “70. Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done.
  29. Similarly, the Supreme Court of Kenya in Francis Karioko Muruatetu & another v Republic [2017] eKLR stated that: -
    - “(41) It is evident that the trial process does not stop at convicting the accused. There is no doubt in our minds that sentencing is a crucial component of a trial. It is during sentencing that the court hears submissions that impact on sentencing.



This necessarily means that the principle of fair trial must be accorded to the sentencing stage too.

30. In addition, the Supreme Court gave guidelines to the Courts to consider in re-sentencing offenders convicted of the offence of murder 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.

31. In addition, clause 1.2 of the Sentencing Guidelines (2023) lay out the principles underpinning the sentencing process as follows: -

- a. Proportionality: The sentence meted out must be proportionate to the offending behaviour meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
- b. Equality/Uniformity/Parity/Consistency/Impartiality: The same sentences should be imposed for same offences committed by offenders in similar circumstances.
- c. Accountability/Transparency: The reasons behind the determination of sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.
- d. Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
- e. Totality of the Sentence: The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behaviour as a whole.
- f. Respect for Human Rights and Fundamental Freedoms: The sentences imposed must promote and not undermine human rights and fundamental freedoms. Whilst upholding the dignity of both the offender (and where relevant, the victim), the sentencing regime should



contribute to the broader enjoyment of human rights and fundamental freedoms in Kenya. Sentencing impacts on crime control and has a direct correlation to fostering an environment in which human rights and fundamental freedoms are enjoyed.

- g. Enhancing Compliance with Domestic Laws and Recognised International and Regional Standards on Sentencing: Domestic law sets out the sentences that can be imposed for each offence. In addition, those international legal instruments, which have the force of law under Article 2 (6) of *the Constitution* of Kenya, should be applied. There are also international and regional standards and principles on sentencing that, even though not binding, provide important guidance on sentencing.
32. Be that as it may, the justification, function and objective of punishment in criminal law, has five major goals: retribution, deterrence, restoration, rehabilitation, and incapacitation.
  33. In that recognition of these goals, clause 1.3 of the Sentencing Guidelines (2023), stipulates the objectives of sentencing as follows:-
    - 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.
34. To revert back to this matter, it suffices to note that, the offender was involved in several marriages and sired children and left. That she had two (2) children aged 13 and 9 years with her first husband and she separated from him in the year 2018 after about eight (8) years and left behind the two (2) children.
35. Further she neglected the deceased, an innocent soul of six (6) months old who was very helpless and indulged in alcohol. The accused conduct was reckless and extremely cruel and heartless. She had an opportunity to take the child to the father, but opted not to do so.
36. That all the parties interviewed vouch for non-custodial sentence for the offender, however the voice of the innocent six (6) month old innocent child will never be heard. Therefore, the views of third parties must be balanced with the need to accord the deceased justice. The deceased's life was cut short and was denied an opportunity to explore her full potential.
37. Furthermore, section (31) of the [Children Act](#) 2022, which relates to parental responsibility and under sub-section 2(a) lists duties of parents among them the duty to provide "basic nutrition" and sub-section 2(b) relates to protecting of the child against "negligence and abuse," and section 152 of the Act provides for a fine of up-to Kshs 500,000 or imprisonment not exceeding a term of ten (10) years or both for neglect of a child.
38. In this particular case, the child died out of negligence therefore the circumstances of the case are grave and serious and calls for a stiffer sentence. Consequently, the sentence that the court will mete out must be both punitive, deterrent and rehabilitative.
39. Having taken into account the period the accused has been in custody of five (5) years, I sentence the accused to serve eight (8) years imprisonment. The sentence to run from the date of this judgment, 26<sup>th</sup> March 2025.
40. Right of appeal with 14 days explained

**DATED, DELIVERED AND SIGNED THIS 26<sup>TH</sup> DAY OF MARCH 2025**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms. Chepkonga for the State

Ms. Lumasai H/B for Mr. Karanja for the accused

The accused present virtually



Ms. Hannah: court assistant

