



**Republic v Kinuthia (Criminal Case 15 of 2020)
[2025] KEHC 9756 (KLR) (29 April 2025) (Sentence)**

Neutral citation: [2025] KEHC 9756 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 15 OF 2020**

GL NZIOKA, J

APRIL 29, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

BENARD WANGENDO KINUTHIA ACCUSED

SENTENCE

1. By an information filed in court dated 5th August 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 and at the close of the entire case, the court delivered a judgment dated 10th March 2025 and found him guilty of the offence of murder 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 he is a first offender. In the same vein, a pre-sentence report and victim impact statement report dated 24th March 2025 was availed.
4. The defence did not tender any mitigation.
5. Be that as it may, a consideration of the presentence report indicates that the accused's parents are alive and reside in Elburgon location, Molo Sub County. That he is forty-four (44) years old and is the first born out of six (6) children.
6. That he completed his Primary Education in 1998 but was unable to proceed further due to financial constraints. That on attain the age of majority he engaged in casual jobs moving to different counties in search of greener pastures and ended up in Nyandarua County where he was employed as a herder by the deceased. Further, the accused married Mary Wambui and they have two minor children who reside in Molo.



7. The report indicates that the accused is remorseful and asks for forgiveness. He attributed the commission of the offence to poor anger management and anti-social tendencies and acknowledges that had he taken a more constructive and peaceful approach he would not have committed the offence. He pleads for leniency from the court during sentencing.
8. The accused family portrays him as reserved, diligent, hardworking with strong moral values who has never engaged in any criminal activities, with his paternal cousin asking the court to exercise leniency in sentencing.
9. The Administrator Elburgon area states that since the family relocated there in 2007 there have been no complaints of misconduct against the accused and he only learnt of the offence when the accused was arrested. He stated that his hope was that the victim's family gets justice.
10. Further, the victim impact statement report indicates that the deceased was 75 years old at the time of his death, a widower and had three adult (3) sons. That he was a farmer at Miharati where he had employed the accused as a herder. His sons described him as hardworking and self-sufficient.
11. The victim's sons stated that the death of their father impacted on them, psychologically, emotionally and socially. That after the death of their mother, the deceased was their pillar of strength and a source of wisdom who provided them with guidance and support. That they have been forced to sell the livestock on the farm and that it now lies idle.
12. The first-born son Kenneth Muchai Munga was especially affected stating that he had spoken with the deceased and agreed on a few issues that morning that he died. That his brother who informed him of the deceased death did not prepare him for the news and he entered into shock to the extent that he blacked out and could not remember anything, that his wife had to come and pick him up.
13. Further, his mother-in-law, who was close to the deceased, was also not prepared for the news and got hypertension and died the next day on the way to hospital, coming as a double tragedy in the space in two days. That did not eat for four (4) days. Furthermore, he has not been able to return to their home in Nyahururu to avoid memories.
14. The sons of the deceased stated that while no punishment can bring back the deceased, they seek for the harshest sentence permissible in law to bring closure by honouring their father and allow them to heal and find peace. That they never want to cross paths with the accused. Further, if the court metes out a lenient sentence, the accused may pose a danger to the community he comes from.
15. The Probation Officer, Jacinta Gichini, leaves it to the court to make an informed decision on the matter.
16. I have considered the records of the accused noting that, he is a first offender and the views in the pre-sentence and victim impact assessment report and note the following: -The significant findings are that:-
 - a. The accused's family describes him as "reserved, diligent has strong morals, integrity has commendable work ethics, hardworking and responsible
 - b. That the accused is a family man with a wife and 2 children
 - c. That he used to abuse alcohol before his arrest
 - d. The accused acknowledges he picked an axe and hit the deceased, and then ran away and was arrested after one month
 - e. That he attributes his behavior to poor anger management and anti-social tendencies.



- f. That he acknowledges that had he taken a different approach on the difference with the employer it would have spared him from his current predicament
 - g. The victim's family has endured profound devastated since his demise and
 - h. That the death has inflicted on them severe economic, social and psychological consequences leading to drastic change in the victim's family members lifestyle
 - i. That, the victim's family oppose a non-custodial sentence and argue that the offender should receive a deterrence sentence to ensure justice is done and prevent similar tragedies in future
 - j. That the Administrator of Elburgon area, where the accused's family stays indicated that, although the accused has no previous record of offence, he hopes the victim's family will get justice
 - k. On the other part the accused's paternal cousin pressed hope that the court will exercise leniency in its sentence
 - l. Notably the pre-sentence report concludes that, the "court can make an informed decision on the matter"
17. 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.
18. The Supreme Court of India in the case of, [Antony Pereira 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."
19. 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.
20. 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."

21. 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.



22. 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.
23. 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.

24. To revert back to this matter, I find that the accused acted irrationally by hacking the deceased to death. He had an alternative way of resolving whatever issue he had with the deceased but chose to hack him to death. The deceased was killed in the most brutal way especially taking into account his age
25. Consequently, the accused must pay for his actions. He deserves a deterrent sentence. I therefore sentence the accused to serve thirty (30) years imprisonment with effect from the date of his arrest and arraignment in court to factor in section 333(2) of *Criminal Procedure Code*.
26. Right of appeal within 14 days.

DATED, DELIVERED AND SIGNED THIS 29TH DAY OF APRIL 2025

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Chepkonga for the State

Mr. Wairegi for the Accused

The Accused present virtually

Ms. Hannah: Court Assistant

