



**Republic v Mboroki & 2 others (Criminal Case 93 of 2018)  
[2025] KEHC 7856 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7856 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 93 OF 2018  
HM NYAGA, J  
MAY 29, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**TIMOTHY MBOROKI ..... 1<sup>ST</sup> ACCUSED**

**JUDAH KIRIMI MUGAMBI ..... 2<sup>ND</sup> ACCUSED**

**MOSES GITONGA MBOROKI ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. This case was fully heard by Hon. Justice T.W. Cherere. The first accused passed on in the course of the trial.
2. In her judgment delivered on 13<sup>th</sup> June 2024, the court found the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons guilty of the offence of murder, contrary to section 203 as read with section 204 of the [Penal Code](#) and convicted them accordingly.
3. The court has already dealt with the position in law at this stage of the trial.
4. The Prosecutor urged the court to consider the circumstances that led to the death of the deceased, who was beaten and left for dead. That there were proper channels that were open to the accused to resolve the issue. That the accused were from Nyumba Kumi and they abused their powers. That the accused have not shown any remorse and that they even tried to harass PW1 during the trial. That the mitigation filed by the accused is just a last minute attempt to sway the court's mind.
5. The prosecutor proposed a custodial sentence of twenty five (25) years.
6. Counsel for the accused persons urged the court to give them a chance to reconcile with the deceased's family. He prayed for a non-custodial sentence.



7. The 2<sup>nd</sup> accused also filed his own mitigation statement. He stated that he is a first offender. That he spent over 10 months in custody before he was released on bond. That he was a member of Community Policing. That he is a father of two, and one of his children has not been able to join college due to his incarceration. That he has a sickly mother who cannot sustain herself. That he is hypertensive.
8. The 2<sup>nd</sup> accused person further states that it has been his wish to reconcile with the family of the deceased.
9. The 2<sup>nd</sup> accused thus pleads for leniency and more so, a non-custodial sentence.
10. At the time of writing this ruling, I did not see any mitigation statement by the 3<sup>rd</sup> accused.
11. It is well settled law that sentencing is at the discretion of the trial court. The primary aim of sentencing is to ensure that an accused person receives a sentence that is appropriate, taking all relevant factors into consideration.
12. In doing so, the court has to determine a sentence that may reflect, if necessary, the aggravating factors, including the seriousness of the offence, the specific circumstances surrounding the case. The court is also enjoined to consider at the mitigating factors, which may have come out during the trial, or at the mitigation, or in the pre-sentence report.
13. This process also involves a careful consideration of the relevant factors, including the potential impact on the victim's family, the potential danger the accused poses to society if released, and any evidence presented during the trial that might influence the severity of the punishment.
14. In *Francis Karioko Muruatetu & Another vs Republic* (2017) eKLR, the Supreme Court settled the law on the so called mandatory death sentence in murder cases. An accused person in such cases may be subjected to any other sentence other than death, if the sentencing court is of the view that circumstances dictate so. The court set out the following as the factors to be considered when passing the sentence;
  - 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.
15. The 2023 Judiciary Sentencing Policy Guidelines state as follows in regards to sentencing;

‘Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.

Retribution: To punish the offender for their criminal conduct in a just manner.

Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.



Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.

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.

Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

Reconciliation: To mend the relationship between the offender, the victim and the community.

Reintegration: To facilitate the re-entry of the offender into the society.'

16. With the above in mind, I will now deal with the matter at hand.
17. The pre-sentence reports for both accused and a Victim Impact Statement were duly filed. The reports tend to revisit the issue determined by the court, the guilt of the accused. It is too late for that.
18. For the 2<sup>nd</sup> accused, it is confirmed that he was a member of Nyumba Kumi, who was called by the 1<sup>st</sup> accused to help in evicting the deceased. The report indicates that the family of the deceased have forgiven the accused. The family wants a cleansing ceremony to be done. They are not averse to the accused being granted a non-custodial sentence.
19. The 3<sup>rd</sup> accused is the son to the 1<sup>st</sup> accused. The report indicates that the deceased's family has also forgiven him, subject to a cleansing ceremony.
20. I have carefully considered the matter. The deceased's only crime was to break back into the house he had rented from the first accused after the first accused had locked him out for non-payment of rent. Even after Sgt Gitonga advised them to take the accused to hospital, they failed to do so.
21. In my view, the accused need to learn that they cannot act with impunity. The deceased was not financially endowed but he did not need to die in such circumstances.
22. In the end, I sentence each accused person to ten(10) years imprisonment. In doing so I have considered the cumulative period that the accused were in custody before they were released on bond.
23. That said, the sentences will commence from 13<sup>th</sup> June 2024, when the accused were remanded in custody after conviction.

**H.M NYAGA**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT MERU THIS 29<sup>TH</sup> DAY OF MAY 2025.**

