



**Republic v Wanene (Criminal Case 20 of 2015)  
[2025] KEHC 11573 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11573 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 20 OF 2015**

**TW OUYA, J  
JULY 31, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JULIUS MUCHIRI WANENE ..... ACCUSED**

**RULING**

1. This is a ruling on sentencing of the accused person herein Julius Muchiri Wanene after he was found guilty of the offence of murder and convicted vide Judgement delivered on 26<sup>th</sup> day of June 2024 by Hon. Justice Wakiaga.
2. The matter was then listed for mitigation before this court on 22<sup>nd</sup> July 2025. Counsel for the accused made oral submissions on behalf of the accused. He stated that the accused committed the offence as a result of a temporary loss of judgement owing to severe intoxication. That at the time of committing the offence the accused was totally drunk.
3. Counsel submitted that during the accused's stay in custody, the accused has been able to contemplate about what happened, has received counseling and is remorseful about his action. He pleads with the court to grant him a lenient sentence as he intends to rejoin the society as an honest man.
4. This court also had the benefit of a pre- sentence report dated 16<sup>th</sup> September 2024 which was availed pursuant to the court directions. The report gives the accused's background as having dropped out of school in class 7, moved to Dandora and worked as a milk vendor before returning home and engaging in casual labor. That he later trained as a mechanic and was working as such in Muruka village when the incident occurred. Upon his interview he stated that he stabbed the deceased unintentionally in what he believed was self defence. That he equally mourns the death of his friend, is remorseful and is pleading for forgiveness of both court and the victim's family.



5. The community on the other hand confirms that both accused and the victim were mechanics and drunkards. That on the material day the two were involved in a drunken brawl leading to the death of the deceased. According to the report, the community was still hostile to the accused and releasing him back would ignite painful emotions.
6. The report recommends that the accused be given a lenient sentence preferably a non-custodial sentence to enable him reintegrate and to be involved in a rehabilitation program.
7. I have carefully considered the accused's mitigation alongside the presentence report. The duty of this court is to balance the rights of the accused with the interest of justice and the accused's family. This court takes into the account the gravity of the offence and the circumstances obtaining thereto.
8. The penalty for the offence of murder for which the accused was convicted is death as provided under section 204 of the *Penal Code*. The jurisprudence in Kenya has since changed after the Judgment of the Supreme Court in Francis Kariokor Muruatetu & another v Republic [2017] eKLR where the Court found that the mandatory nature of the death sentence as set out in the *Penal Code* is unconstitutional.
9. In Owendo v Republic [2023] KECA 718 [KLR];

“The appellant was convicted and sentenced to death on 30<sup>th</sup> January, 2017. That was the sentence that was set out in Section 204 of the *Penal Code* for a person found guilty of murder. The appeal set aside the death sentence and substituted it with a sentence of twenty-five [25] years imprisonment from the date when the appellant was first produced in Court for plea. This decision was arrived at after the court considered the circumstances where the appellant and the deceased were fairly young, that they had lived together for about 7 months but the relationship was not a good one but one full of quarrels resulting from their drinking alcohol and probably associating with others to the annoyance of each other. The court found that the sentence of death was not appropriate in this case.”

10. In Kimathi alias Kuguru v Republic [2023] KECA 1584 [KLR]; the court observed that:

“26. The appellant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The prosecution was required to prove the element of malice aforethought or specific intention before the appellant could be convicted of murder. By virtue of Section 13 [4] of the *Penal Code*, the trial court was required to take into account the appellant's intoxication for purposes of determining whether he had formed malice aforethought. The said section provides that:

[4] Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.”

11. The Court in the case of Benson Kedisia v Republic [2009] eKLR observed as follows regarding the application of Section 13 [4] of the *Penal Code*:

“Evidence of drunkenness need not necessarily come from an accused person himself; such evidence can come from the prosecution witnesses and it cannot be simply ignored because it has only come from the prosecution witnesses. If the learned Judge had not wrongly



discharged the assessors, it would have been her duty to direct the assessors on the issue of alleged drunkenness on the part of the appellant.”

12. Finally, in *Chai alias Juma Kazungu v Republic* [2025] KECA 185 [KLR] The court proceeded to pronounce itself thus:

58.

“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 mitigating 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 article 25[c], 28, 48 and 50[1] and [2] [g] of *the Constitution*.”

13. I have taken into account the accused’s mitigation, pre -sentence report and the entire circumstances of the case.it is noteworthy that the offence was committed during a period when both the accused and the deceased were presumed to be drunk. I have also noted that the accused is a first offender as no records have been availed by the prosecution.
14. In view of the foregoing, I am of the view that the accused ought to be accorded an opportunity to reform, rehabilitation being one of the objectives of sentencing under the Judiciary Sentencing Policy Guidelines, 2023, and as a consequence, I will give him a suitable sentence to accord him a second opportunity in life.
15. Subsequently, I hereby sentence the accused to fifteen [15] years imprisonment. The jail term shall take effect from the date he was taken into police custody i.e. 23<sup>rd</sup> April 2015.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**HON. T. W. OUYA**

**JUDGE**

For Accused - J.N Mbuthia

Prosecution - P. Mwangi

Court Assistant - Brian

