



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nthiga alias 'Blackie & 3 others (Criminal Case
E012 of 2023) [2025] KEHC 11331 (KLR) (30 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 11331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E012 OF 2023
RM MWONGO, J
JULY 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

STANLEY MWANGANGI NTHIGA ALIAS 'BLACKIE 1ST ACCUSED

SIMON WACHIRA NGARI ALIAS 'KANGALI 2ND ACCUSED

AMBROSE MUGENDI IRERI 3RD ACCUSED

JOSIAH WAWERU NTHIGA 4TH ACCUSED

SENTENCE

The Charge and Background

1. The accused persons are charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 07th October 2021 at Minuri village in Mbeere South Sub-County within Embu County, the accused persons jointly murdered Faustino Njeru Njoka. The accused persons pleaded not guilty and a plea of not guilty was duly entered for each of them before the matter proceeded to full hearing.
2. The prosecution called 13 witnesses in support of its case while the 4 accused persons defended themselves as defense witnesses. The case was that the accused persons went to the home of the deceased and forced their way into the compound. They demanded for their rights which the deceased, being the clan elder, had allegedly denied. They attacked him, his family members, and guests present, with crude weapons. They then set the deceased's house and cars on fire. One of the cars that were burned belonged to a guest who was visiting the deceased. Every structure in the deceased's home was razed down and the family members got away with bodily injuries while the deceased lost his life.



3. Following the incident, the accused persons were also charged with 3 counts of arson and 2 counts of attempted murder in Siakago Magistrate's Court Criminal Case Number E565 of 2022. In that case, all the 4 accused persons were convicted of 2 counts of arson and 2 counts of attempted murder. They were sentenced to 10 years imprisonment on each count, the sentences running consecutively. The accused persons are in the process of lodging an appeal against this decision through Embu HCCRA No E031 of 2025 challenging their convictions and sentences.
4. In this case, the four accused persons were convicted for murder in a judgment delivered on 19th December, 2024. A pre-sentence probation report was ordered and mitigation fixed. The Court also requested that the lower Court file on the arson case be availed. Mitigation was eventually heard on 19th May, 2025.

Mitigation

5. The accused persons stated in mitigation, that they are all young people below the age of 35 years old and were a part of a larger mob at the time of the incident. That they were not motivated to commit the offence which was not foreseen. They have young families and they expressed remorse. They prayed for a lenient sentence before this court and they are also hopeful that their appeal against the decision in Siakago Magistrate's Court Criminal Case Number E565 of 2022 will succeed.

Response to Mitigation

6. The prosecution urged the court to consider the aggravating factors which are that the deceased and his family were violently assaulted, which assault led to the death of the deceased. That the accused persons have each been sentenced to 40 years imprisonment following their conviction for arson and attempted murder of the deceased's relatives. The prosecution urged the court to look at the severity of the offence and impose a deterrent sentence of 30 years imprisonment upon each of the accused persons.

The Probation Officer's Pre-Sentence Report (POR)

7. There are separate PORs for each of the four accused persons and they are all dated 20th January 2025. According to the separate reports, the incident was triggered by land grabbing attempts by the deceased against the community. The local administration reported that they were aware of several cases against the deceased regarding land. The disputes were between the Ikandi and Nditi clans and that the deceased was grabbing Ikandi Clan land.
8. The deceased was survived by his wife and sister who both moved away from the village after the incident, fearing for repeat attacks. They stated that they preferred custodial sentences to be imposed against the accused person. The area chief said that the 4 accused persons hail from the village and are known to him. That they did not have violent tendencies and that this incident occurred when they were part of a mob. He hoped that the offenders would be subjected to non-custodial sentences so that they would reconcile with the family of the deceased.
9. In the case of the 40-year-old 1st accused person, the report details that his wife left with the children after he was sentenced to 40 years imprisonment by the Magistrate's court in Siakago. The deceased had settled in their neighborhood but he had been trying to take their land for some time. Prior to his death, the deceased and the offender's family had been having differences and according to the 1st accused's mother, the deceased used to beat them. The 1st accused's family prayed for a non-custodial sentence and they would support the offender's rehabilitation. In the case of the 1st accused, the POR recommended a non-custodial sentence.



10. In the case of the 2nd accused, he is aged 34 years and has a young family. He is a nephew of the deceased and the family of the deceased is yet to make peace with him. Prior to this incident, the 2nd accused was not involved in any criminal activities but he is serving 40 years imprisonment on arson and attempted murder charges arising from the same incident. Both the local administration and the POR recommend non-custodial sentence to foster reconciliation with the deceased's family.
11. In the case of the 3rd accused person, he is 34 years old and a Nyumba Kumi elder in his neighborhood. He has a young family and he pleaded for leniency from the court. The local administration and the POR recommended a non-custodial sentence. The community is divided on the options of custodial and non-custodial sentences, keeping in mind that he has already been sentenced to 40 years imprisonment by the Siakago Magistrates Court.
12. In the case of the 30-year-old 4th accused person, he is a miraa broker and vendor who has a young family. He was remorseful and he regrets the events of that day which were executed by a mob that he was part of. He has no prior criminal records save for his conviction and sentence by the Siakago Magistrate's Court. Both the local administration and the POR recommend non-custodial sentence to foster reconciliation with the deceased's family.

Analysis and Determination

13. The accused were found guilty of murder contrary to section 203 as read with 204 of the [Penal Code](#). In its elaborate judgment, the Court examined the evidence and found that the offence was premeditated and executed with malice aforethought. Since the deceased was killed by a mob, section 21 of the [Penal Code](#) was applied to infer criminal liability upon each of the accused persons individually.
14. At the point of sentencing, the court is bound to consider aggravating factors from the circumstances of the case, the mitigating factors as offered by the accused person following conviction, the victim's family's propositions and any other circumstances that should inform the severity of the sentence imposed. With these factors in mind, a sentencing court has to apply its discretion judiciously
15. Section 204 of the [Penal Code](#) prescribes a sentence of death upon conviction for the offence of murder. It states:

“ Any person convicted of murder shall be sentenced to death.”
16. The incident leading to the death of the deceased was triggered by land disputes between him and the members of the community. This has been revealed by the local administration through the POR. The accused persons were a part of a larger group which invaded the deceased's home and destroyed all his belongings by burning everything down. The deceased did not have children because they predeceased him but his immediate family is his wife and sister who also suffered assault at the time of the incident. The deceased's wife and sister have since relocated to Meru as they still fear for their lives if they live amongst the community where the deceased died.
17. The Judiciary [Sentencing Policy Guidelines](#) 2023 provides the objectives of sentencing which are:
 1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.



4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. Community Protection: to protect the community by incapacitating the offender.
 6. Denunciation: To communicate the community's condemnation of the criminal conduct.
18. In sentencing, the rights of the victim's family should be balanced against the rights of the accused person to a lenient sentence. This was echoed in the case of *Republic v Mwangi* [2024] KEHC 367 (KLR) (Sentence) it was held that:

“The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentence proposed by the State is appropriate and within the range of sentences meted out in similar cases.”

19. The court should therefore exercise its discretion in sentencing, which discretion must be exercised judiciously as was stated in the Nigerian case of *African Continents Bank v Nuamani* [1991] NWLI (part 86) 486, where it was observed that:

“The exercise of court's discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

20. From the POR, it appears that the family of the deceased no longer live within the community where the accused persons hail. Part of the community wants the accused person to be subjected to custodial sentences while the other part prefers non-custodial sentences. The accused persons themselves prayed for non-custodial sentences while the deceased's family prayed for custodial sentences.

Disposition

21. Taking into account all the foregoing, and given the circumstances of this case, it is my view that both custodial and non-custodial sentences may be imposed herein one after another.
22. Accordingly, I sentence each of the accused to 15 years imprisonment. In the last two years of the sentence term, each accused person shall serve a non-custodial sentence during which period they will be engaged in community service supervised by the County Probation Officer in a Programme to be designed by such Probation Officer and attendance of each duly monitored and recorded.
23. The sentence herein shall be computed taking into account any time spent in pre-conviction custody in terms of Section 333 (2) *CPC*.
24. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF JULY, 2025.

R. MWONGO

JUDGE



Delivered in the presence of:

1. All Accused Persons - Present in Open Court
2. Ngare for Accused 1 - 4
3. Ms. Nyika for the State
4. Francis Munyao - Court Assistant

