

KENYA / JUDGMENT

Republic v Mutiso [2026] KEHC 7064 (KLR)

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COURT

High Court

BEFORE

NIO Adagi

CASE / FILE NUMBER

Criminal Case E016 of 2025

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Republic v Mutiso (Criminal Case E016 of 2025) [2026] KEHC 7064 (KLR) (15 April 2026) (Sentence)
Neutral citation:

[2026] KEHC 7064 (KLR) Republic of Kenya In the High Court at Machakos Criminal Case E016 of 2025 NIO Adagi, J April 15, 2026 Between Republic Prosecution and Judith Mwelu Mutiso Accused Sentence 1. The accused Judith Mwelu Mutiso was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code . 2. The particulars of the offence are that on the 30 th day of June, 2025 at Mutituni Village in Machakos Sub-County within Machakos County murdered JM. 3. The accused took plea on 29/07/2025 and a plea of not guilty was entered. 4. On 23/10/2025 the accused through her advocate Mr. Otto Nduva informed court that they had written to the prosecution requesting plea bargaining and the prosecution confirmed this position. 5. On 04/03/2026 parties appeared before court where the prosecution presented the executed plea-bargaining agreement dated 02/03/2026 and the court granted a further mention date for 17/03/2026 to allow the prosecution prepare a substituted information. 6. On the said 17/03/2026 the accused took plea on the substituted charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code and a plea of guilty was entered. 7. The court then directed that a victim impact assessment report be availed before court and that the accused does file submissions on mitigation. 8. The accused through her advocate filed submissions dated 18 th March 2026. The accused humbly prays that this court does impose a non-custodial sentence in light of the circumstances of this case. In mitigation, the accused's advocate submitted that the accused entered into a plea-bargaining agreement at the earliest opportunity pursuant to sections 137A – 137O of the Criminal Procedure Code . 9. That the accused took up the plea bargaining as a way of accepting responsibility even before she was subjected to trial and this demonstrates her willingness to facilitate the expeditious disposal of this case. The accused is a young first offender aged 24 years with no previous record and this is demonstrated by the pre-bail report dated 22/09/2025. The accused is deeply remorseful and highly regrets committing the offence and is receptive to rehabilitative measures to ensure that she is re-integrated

to the society. 10. The accused prays that this court considers the guiding factors in sentencing as provided in the Sentencing Policy Guidelines 2023 under paragraph 2.3.15 so as to grant her a non-custodial sentence. 11. It was also submitted that this is not a case of malice driven by criminal intent in the ordinary sense. The offense arose out of extreme economic hardship and immense psychological distress at the time where the accused had taken up the role of being a breadwinner for her family. 12. The victim/deceased in this case, JM aged 2 years at the time of his death, was the only child to the accused and the accused would do the best she could to make ends meet by hawking eggs so as to earn a living. The economic and psychological stress she was going through at that time took a toll on her as a young single mother. That the accused understands that this does not reduce the offence and prays that this court considers the exceptional circumstance the accused was in prior to the offence. 13. It was submitted that this is a unique case where the victim and the accused come from the same family. 14. The accused invites the court to look at the Victim Impact Statement Report dated 17/03/2026 which demonstrates that the accused's family had a sit down and agreed to forgive her and expressed their understanding of her circumstances. The family of the accused & victim have extended their forgiveness and are willing to have the accused come back home and walk with her by offering guidance and counselling. 15. The said reconciliation aligns with article 159(2)(c) of the Constitution of Kenya which promotes restorative justice. The family members namely: Eunice Mwendu Maweu (grandmother to the deceased), Dorothy Maweu (great-grandmother to the deceased), Paul Musyoki Kioko (uncle to the accused) & Dorothy Maweu (aunt to the accused) have all expressed their forgiveness to the accused and are ready to have her back home. Reliance is placed on the Eldama Ravine High Court case of Republic v John Kibugi Ng'ang'a [2025] KEHC 5490 (KLR) where the court while dealing with a similar case involving the accused and victim coming from the same family at paragraph 21 held that: " I take note of the fact that the accused and deceased were siblings and the parents have forgiven the accused and undertake to do cleansing ceremony so as to enable the accused integrate back to the community and together with local administration, they are ready to assist the accused integrate back to society. In view of the above, I am inclined to impose a noncustodial sentence and impose probation sentence for a period of 3 years." 16. Similarly the Nyeri High Court case of Republic v Jane Mugure Kimani [2024] KEHC 899 (KLR) the court in imposing a 3 year non-custodial sentence at paragraph 15 held that: " The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved on judicial time; also taken into consideration are the personal circumstances of the accused that she has also expressed her remorse and is deemed to be a first offender." 17. The accused humbly prays that this honourable court considers the reconciliation and forgiveness by the family as a mitigating factor warranting a non-custodial sentence. 18. It was also stated that the accused has been held in remand at Machakos GK Women Prison from the date of her arrest on 30/06/2025 up to date. During the said period the accused has reflected deeply, has confronted the gravity of her action and is genuinely remorseful. The accused prays that this court takes that period into account pursuant to section 333(2) of the

Criminal Procedure Code . 19. The accused humbly prays that this court imposes a noncustodial sentence upon her and that she is ready and willing to comply fully with any conditions that may be imposed.

Disposition

20. The accused took away the life of her innocent 2 years old son in a very painful and cruel manner. Having taken all factors into consideration and being aware that the sentence to be imposed upon conviction is within the sole discretion of the court, this court makes the following orders: a. The accused having entered into a plea bargain agreement pursuant to the provisions of section 137A-Q of the Criminal Procedure Code Cap 75 of the Laws of Kenya and she having pleaded freely, voluntarily without threat, force, intimidation or coercion of any kind and without promise of any kind other than as contained in the plea bargain agreement herein dated 2nd March 2026, she is convicted and sentenced on his own plea of guilty for the offence of manslaughter contrary to section 205 of the Penal Code . b. This court observes that the family of both the accused & the victim have extended their forgiveness and are willing to have the accused come back home and walk with her by offering guidance and counselling. The accused has been forgiven by her family as demonstrated by her mother and grandmother who pleaded with the court under oath to discharge the accused unconditionally. Since sentencing is at the discretion of the court, the accused is sentenced to serve two (2) years non-custodial community service through the Probation Department, Machakos County. c. The accused is ordered to fully co-operate with her Probation Supervisor during the period of serving her non-custodial sentence imposed herein, failure to which she will be re-arrested and put in custody to serve any remainder of the sentence in custody. Orders accordingly. This file is closed. SENTENCE WRITTEN, DATED & SIGNED AT MACHAKOS THIS 15 TH APRIL, 2026. NOEL I. ADAGI JUDGE SENTENCE READ AT MACHAKOS THIS 15 TH APRIL, 2026.

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