

KENYA / JUDGMENT

Republic v Mburu [2025] KEHC 19330 (KLR)

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COURT

High Court

BEFORE

GL Nzioka

CASE / FILE NUMBER

Criminal Case E005 of 2021

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Republic v Mburu (Criminal Case E005 of 2021) [2025] KEHC 19330 (KLR) (21 November 2025)
(Sentence) Neutral citation:

[2025] KEHC 19330 (KLR) Republic of Kenya In the High Court at Naivasha Criminal Case E005 of 2021 GL Nzioka, J November 21, 2025 Between Republic Prosecutor and Moses Wainaina Mburu Accused Sentence 1. The accused was arraigned before the court charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charge are as per the charge sheet. 2. The charge was read to him and he pleaded not guilty and the case was fully heard. By a judgment dated 29 th October, 2025, the accused was found guilty of the charge and convicted accordingly. 3. Subsequently, the court was given records which indicates that the accused is a first offender. In the same vein, the court ordered for and was provided with the pre-sentence report and victim impact assessment report which are also considered herein. 4. Be that as it may, reveals that, the offender attended education up to class eight (8) and has been doing several causal jobs. That he is married to Nancy Nyaboke and are blessed with two (2) children aged nine (9) and five (5) years. 5. That the accused's father described him as hardworking, self-driven and responsible individual and prays for a lenient sentence. However, the report indicates that he denies committing offence and shifts blame to his associates and that he was implicated as he was a visitor in the area. He however pleads for leniency in sentencing to cater for his young family who depend on him. 6. The report further indicates that the victim was seventy-five (75) years old and the family is still traumatized. They pray for a severe sentence to accord them justice and safeguard the community. 7. Further that the Administration call for a harsh sentence to serve as lesson or warning to other offenders. In conclusion the probation officer leave the matter to court's informed decision. 8. In addition, the accused's mitigation that, he is remorseful and seeks forgiveness is considered. Further that he is a first-time offender with no history of being in conflict with the law and has lived harmoniously with the community.

That he is capable of reforming as evidenced by his conduct throughout the proceedings and behaviour while in remand. 9. Further, he and his extended family hail from Kandara, Muranga County and he is willing to relocate from Ihundu where the offence occurred to ensure he does not interact with the victim's family. He prays that the court grants him an avenue that will aid in his reform as opposed to a custodial sentence. 10. That the court considers that, subsequent to his arrest and arraignment, he was remanded at Naivasha Prison and has been in custody since his arrest. He urges the court to consider this period as part of his sentence to be imposed as the court hands him a custodial sentence. 11. In addition to the afore reports, the objectives of sentence as outlined under clause 1.3 of the Sentencing Guidelines (2023) the sentencing policy as follows, have been considered

- 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. 12. To revert back to this matter, the fact that the accused is a first offenders is considered and so is his mitigation, however, the fact that he does not admit committing the offence makes him unsuitable for a non-custodial sentence as it will be difficult to benefit from rehabilitation. 13. Furthermore, the victim's family and community call for deterrence sentence. In addition, the victim was seventy-five (75) years old. She died as the accused subjected her to forceful sexual assault and blocking of her nose and mouth, leading to asphyxia and death. What the deceased was subjected to was so cruel, inhuman and heinous and therefore call for deterrence. 14. The accuse is in his prime age of thirty (30) years plus, if indeed he wanted to engage in sexual activity, he had other alternatives. The advanced age of the deceased made her qualify as accused's grandmother who would deserved respect, dignity and care, yet the accused subjected her to indignity and sexual abuse. 15. Taking judicial notice of Africa Culture, the accused's act would attract a curse upon him as the society frowns upon such abominable an act by a young man to an elderly member of the society. He would generally be sent away from the family, clan and society at large. His plea for a lenient sentence does not therefore arise. 16. Furthermore, the victim was helpless and deserves justice. Consequently, I sentence the accused to serve life imprisonment. 17. Right of Appeal in 14 days explained. DATED, DELIVERED AND SIGNED THIS 21 ST DAY OF NOVEMBER, 2025. GRACE L. NZIOKA JUDGE In the presence of: Mr. Abwajo h/b for Ms. Chepkonga for the State. Mr. Wairegi for the accused. Accused present virtually. Ms. Hannah: Court Assistant.

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Prepared on 28 October 2026 · Esheria