



REPUBLIC OF KENYA



**State v Magamu (Criminal Case 17 of 2017)
[2023] KEHC 1276 (KLR) (22 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE 17 OF 2017
RE ABURILI, J
FEBRUARY 22, 2023**

BETWEEN

STATE PROSECUTION

AND

WALTER MAGAMU ACCUSED

RULING

1. The accused person herein has been convicted of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#), after the court reduced the initial charge of Murder to Manslaughter.
2. The Prosecution intimates that they have no criminal record on the convict hence the can be treated as a first offender.
3. In mitigation, the accused submits that he is remorseful, thanks the court which he has great faith in for expediting justice and prays for leniency in sentencing. That he was the sole breadwinner to his family, that he has one son who is now 9 years and who was separated from him following the death of the deceased. The child lives with his maternal relatives and he has no idea whether he goes to school or not.
4. The accused person submits that his father is crippled, that he is the only person in his humble family who was the sole breadwinner.
5. He pleads for a non-custodial sentence. He regrets absconding court when he was released on bond and blames his naivety. He apologizes to the court. The accused person also apologies to the entire society for what happened and submits that he owes the society an enormous apology.
6. As none of the deceased's relatives are before court, I am not in a position to obtain any Victim Impact Statement from them.



7. I have considered the mitigations by the convict who is a first offender, the circumstances under which the offence herein was committed, the fact that the accused is the sole breadwinner of his family and that following the offence herein, he automatically lost his job as a police officer. He has a son to raise and he has been separated from the said son for more than five years. The convict is 34 years old and today is his birthday from his own submission. The deceased was his wife.
8. From his defence, he loved the deceased such that he could not let an interloper interfere with their union. However, love does not hurt. The accused person and deceased were both young persons working as police officers. Although the accused did not raise the absolute defence of provocation, this court has made a finding of fact that it requires a super human and not a mortal man with unusual courage and supreme sobriety and self-control of heavenly hosts to find another man or woman on his or her bed as the alternative spouse to their spouse for them to simply say to their spouse, “ Darling, since you prefer the other guy or lady, to me and for whatever reason, follow him/her”
9. This is not to offer any justification for Murder but that the accused reacted to the situation that he found and in the circumstances of this case, there could have been more fatalities than was the case.
10. Punishment for Manslaughter upon conviction is up to life imprisonment. However, considering all the above mitigations and the fact that the accused is remorseful and ready to reform, and as he has been in custody now close to one year since he was rearrested after he absconded bond which he attributes to naivety, I hereby exercise discretion and sentence the convict herein Walter Magamu to serve five (5) years imprisonment.
11. The prison term shall be computed taking into account the period that he has been in custody following his re-arrest, in line with the provisions of Section 333(2) of the [Criminal Procedure Code](#).
12. Right of Appeal to the Court of Appeal explained.
13. I so order.
14. This file is now closed.

Dated, signed and Delivered at Siaya this 22nd Day of February, 2023

R.E. ABURILI

JUDGE

Page 2 of 2

