



**Republic v Moraa (Criminal Case E021 of 2022)  
[2023] KEHC 2531 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2531 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL CASE E021 OF 2022  
CM KARIUKI, J  
MARCH 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SABINA KERUBO MORAA ..... ACCUSED**

**RULING**

1. The Accused was charged with Murder and was convicted of manslaughter charge after charges were reduced to that lesser offense after a successful plea bargain. The Prosecution indicated that the accused is a first offender as there were no previous records.
2. However, Probation and Care Report (PCR) indicated that: The offender's age is 37, though her legal age is 24, for that is what she gave when applying for a national identity card. She is known to her mother and siblings by the name Rufina Ingato, and it appears she changed her name to Sabina Kerubo after leaving home more than 20 years. He had earlier lied that she does not have a National Identification Card, but it exists with a different name and age; she lies a lot. She is the daughter of Florence Moraa and Thomas Lubembe and the second born of nine children. She left home at 14 and has been away for over 20 years. She reconnected with her family members about two years ago during her daughter's death; and was arrested for the current offense. Though there is no cohesion within the family, the mother says she is ready to host her if released. She has been married twice and has five children, once deceased. Her two older children have been living with their father since their parents' separation, whereas her two young children, sired by the deceased person, are currently in the custody of his family. The deceased person's family is opposed to a non-custodial sentence. Among the reasons given were; they have not healed, and if she is released, it will only add to their pain; she ought to share in their pain by suffering incarceration; the offender had been habitually assaulting the deceased person, and they always met the hospital bills and warned her in vain, her family has not made any efforts to approach them since the death of their son; the offender is a very violent person, and if released, she will continue causing harm to others. There is criminal history in the family, as noted above, where



her father is serving time in prison; her daughter was stabbed to death by a cousin, and she admits having a previous conviction through recorded were not availed. Some level of hostility was perceived from community members in Kabazi, where the offense was committed, should she be released back to them. However, she plans to go live at her mother's place, which is not nearby.

3. The defense mitigated that she was a first offender. She is remorseful and repentant. She has been in custody for five (5) months.
4. The deceased was the aggressor, as he was beating her when she stabbed him to rescue herself. She has Six (6) children, and thus, the court is urged to award her a non-custodial sentence, i.e., a suspended sentence.
5. The defense also responded to Probation and Care Report (PCR) findings and stated as follows: The report discusses a marriage full of fights and treatment where the family paid the bills. The question is where the OB reports of assaults or P3 forms for treatment, outpatient care, discharge summaries, or any evidence settling medical bills are. Why did the two not separate or divorce each other? There is no evidence of separation or divorce proceedings ever filed in any court. In the absence of the necessary verifiable documents, it can be concluded that the deceased's family can say anything as they are bereaved, sorrowful at a loss, and mourning and angry. Personal vendetta and settling scores of retaliation or cries for vengeance lead them to lack objectivity in maligning their daughter-in-law at the expense of the two children they care for. The life and maintenance of the two children of tender years and their best interest principle is of paramount consideration. The loss of a husband, a father, a friend, and a marriage partner is so devastating that an officer saying the accused is not remorseful is just an overzealous, careless, and unthought-out statement. The Prosecution suggested three years term, but the defense believes non-custodial or probationary. In contrast, the defense means the accused has been in custody for one year or fewer months. This will enable her to pick up the pieces of her life together, start afresh, and care for her children.
6. The facts read and admitted in the brief state that, after taking beer between themselves, the couple, the accused, asked the deceased about the maize which she was to take to the posho meal. Instead of answering, the deceased grabbed her and pushed her to the bed prompting a fight between the two. This produced the accused to pick a knife and inflict a fatal stab on the deceased, leading to his death.
7. No effort demonstrated that she was defending or rescuing herself; thus, the same was not justified, as she could have run away. The deceased was unarmed. Domestic violence is rampant and ought to be controlled by sentencing effectively.

i. In the instant matter, I find it fit to sentence the accused custodial sentence of 3 years after considering all circumstances, including the period in custody and reports and mitigations.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU ON THIS 28 TH DAY OF MARCH 2023.**

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**CHARLES KARIUKI**

**JUDGE**

