



REPUBLIC OF KENYA



**Republic v Lubhaka (Criminal Case E006 of 2023)  
[2023] KEHC 26696 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26696 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E006 OF 2023  
WM MUSYOKA, J  
DECEMBER 20, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CHARLES WANZALA LUBHAKA ALIAS CHARLES MALALA ..... ACCUSED**

**RULING**

1. The accused person herein was convicted on 27<sup>th</sup> November 2023, of the murder of James Ouma Etyang, on the night of 29<sup>th</sup> and 30<sup>th</sup> December 2022. He is now a convict. I am called upon to sentence him for that offence. I will consider the penalties available in law for that offence, the circumstances of the commission of the offence, the feelings of the family of the victim and the antecedents of the convict.
2. The penalty prescribed by the law for murder, according to section 204 of the *Penal Code*, Cap 63, Laws of Kenya, is death; while that for manslaughter is a maximum of life imprisonment, by virtue of section 205 of the Penal Code. The Supreme Court decision, in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), has outlawed the death sentence, on grounds of unconstitutionality. That then leaves us with imprisonment as the next available penalty for serious felonies like murder. Life imprisonment is the maximum for manslaughter, which would mean that the penalty for murder is more or less the same as that for manslaughter. *Julius Kitsao Manyeso v Republic* Malindi CACRA No. 12 of 2021 (Nyamweya, Lesiit & Odunga, JJA)(unreported) declared life imprisonment unconstitutional, and *Evans Nyamari Ayako v Republic Kisumu* CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)(unreported) translated life imprisonment to 30 years.
3. I called for a pre-sentence report. The probation office has compiled the report, and has filed it, dated 18<sup>th</sup> December 2023, filed herein on even date. It is generally favourable, although the convict



is unremorseful, according to that report. The probation office invites the court to exercise its own discretion.

4. The evidence, that was placed before the court, was that the deceased was a village elder, who was shielding an innocent person from being harmed by a mob, that was claiming that he was a thief, and baying for that person's blood. The convict was part of that mob. The deceased was hurt by 2 individuals, one of whom hit him on the head with a rungu or heavy stick, the other stabbed him. The hit on the head was by the convict. There was absolutely no justification for the assault on the deceased, who was just discharging his duty as a State operative at the grassroots. Disrespect and disregard for a person like him, who was in the public or community security structure or sector, amounted to a disregard for law and order, and did not bode well for the rule of law. Without community leaders, like the deceased, holding communities together at the grassroots, the country would degenerate into chaos and anarchy. The convict, no doubt, acted like an agent of chaos, anarchy, disorder and lawlessness. A deterrent sentence is called for, for the likes of him.
5. I have noted the circumstances of the commission of the offence, the statements made by the Advocate for the convict in mitigation, and the pre-sentence report. I have also noted the antecedents of the convict, especially the fact that he has young children. I have taken all these into account, balancing them against the fact that a human being lost his life, in the most senseless and needless way. In the circumstances, I shall give the convict a custodial sentence, of 30 years imprisonment. There is a right of appeal to the Court of Appeal, within 14 days, of this order. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 20TH DAY OF DECEMBER 2023**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Okutta, Advocate for the accused person.

