



**Republic v Wandera (Criminal Case E012 of 2022)
[2023] KEHC 27052 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27052 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E012 OF 2022
WM MUSYOKA, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

SYLVESTER ODUORI WANDERA ACCUSED

RULING

1. The accused person herein was convicted on 27th November 2023, of the manslaughter of his wife, Harriet Amoit, on 23rd August 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 manslaughter is life imprisonment. That is what is in the Kenyan statutes. However, recent development in the jurisprudence on mandatory sentences and life imprisonment have thrown everything into a spin. *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) made mandatory death as the punishment for murder unconstitutional. That meant that for murder the penalties available would include imprisonment, which is what ordinarily obtained for manslaughter. *Julius Kitsao Manyeso vs. Republic* Malindi CACRA No. 12 of 2021 (Nyamweya, Lesiit & Odunga, JJA)(unreported) held that the sentence of life imprisonment, whether mandatory or not, was unconstitutional. Then *Evans Nyamari Ayako vs. Republic* Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)(unreported) held that life imprisonment translated to 30 years in jail. I shall bear that in mind.
3. As stated above, the penalty 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 vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ),



has, no doubt, thrown everything into a spin, as indicated, yet the Attorney-General has not taken steps to straighten out the matter, by amending the Penal Code, to align it to the emerging jurisprudence. There is no clarity at all, when it comes to assessing the appropriate sentence to impose for both manslaughter and murder. It is an open field and, in terms of sentence, it would now appear that there is no difference between murder and manslaughter. The line has been blurred.

4. I called for a pre-sentence report. The probation office has compiled the report, and has filed it, dated 15th December 2023, filed herein on even date. It is generally favourable. The convict is remorseful, according to that report. It is indicated that compensation was paid to the family of the victim. The probation office recommends a non-custodial sentence. The deceased is depicted, by the community, in the report, as having had a toxic relationship with the convict, and for which she was blamed.
5. The convict was convicted of manslaughter, a killing happening in circumstances that do not amount to murder. The evidence that was placed before the court was that deceased got herself drunk, on money given to her by the convict to spent on food, and when she got home, she became aggressive with the convict. She hit him twice, he tried to avoid her, but he eventually snapped and hit her with one of the arms she was using to attack him. I found that he acted in self-defence and under the strain of provocation. The deceased created the environment, within which she died, and it would appear that there was no intention, at all, on the part of the convict to cause her any harm.
6. 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 her life. In the circumstances, I shall give the convict a non-custodial sentence, being a probation order for 3 years, to be served under the Director of the Probation and Aftercare Service Busia County. There is a right of appeal to the Court of Appeal within 14 days.

Orders accordingly.

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

W MUSYOKA

JUDGE

