



**Republic v Wakhulwa & another (Criminal Appeal 37 of 2020)
[2022] KEHC 17173 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 17173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL 37 OF 2020
RN NYAKUNDI, J
JULY 27, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRED BUTIYA WAKHULWA 1ST ACCUSED

PAUL MAINA SINDANI 2ND ACCUSED

RULING

- The 2 accused persons pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. This is a serious offence for the purposes of section 205 for it carries a maximum of life sentence once found guilty and convicted to that effect. During the sentencing hearing learned counsel M/s Kogo offer mitigation on behalf of the accused person while the state through prosecution counsel Mugun submitted on aggravating factors. According to Mr Mugun the offence was committed involving very high culpability by the accused person to cause serious harm to the deceased. The court also considered the presentence report dated July 20, 2022. It is trite that homicide involves the unlawful killing of another human being. When I draw the comparisons, between the aggravating factors, mitigation, and the victim impact statement. I am dissuaded to exact non-custodial sentence as invited by the defence counsel. Much of the circumstances of this offence cumulatively amount to a call for a custodial sentence. That is punishment should fit the criminal as well as the crime. For the court to be fair to the society it has to blend the principles of sentencing with a measure of mercy according to the circumstances. Therefore, in sum I sentence each of the accused persons to 48 months imprisonment.

It is so ordered.

DELIVERED, DATED, AND SIGNED AT ELDORET ON THIS 27TH DAY OF JULY 2022

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R. NYAKUNDI
JUDGE

