



**Republic v JOO (Criminal Case E021 'B' of 2022)
[2025] KEHC 8479 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8479 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E021 'B' OF 2022**

**DK KEMEL, J
JUNE 17, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOO ACCUSED

RULING

1. The accused person herein JOO has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Vide the judgment dated 28th April 2025, the accused herein was found guilty and convicted accordingly.
2. Sentencing hearing took place on 23/5/2025. Mr. Ooro F, learned counsel for defence submitted inter alia; that the accused is a first offender, he is a family man with two children aged ten years old and two years old who are with the grandfather; that the accused is remorseful of the offence and that the accused is not in good health as he needs constant attention; that the court consider granting him a non-custodial sentence.
3. Mr. Soita learned counsel for the prosecution submitted inter alia; that they had no past records for the accused; that as regards the issue of health, it is the doctors to confirm; that this is a pure Sexual Gender Based Violence matter as the deceased was a wife to accused; that accused be given a custodial sentence.
4. The court called for a pre-sentence report by the Probation department. The report is dated 20/5/2025. The same indicates inter alia; that both the offender and his family, the family of the deceased, community members and local administration were interviewed; that the accused was raised in a polygamous family; that the offender has five siblings one of whom is deceased; that both his parents are alive; that he rose from a humble upbringing; that the offender was born in 1990; that the offender attended his basic education upto KCPE level; that he enrolled at Abidha Polytechnic an acquired masonry skills in between 2006 and 2011; that the offender got married to the deceased FA



and were blessed with a son aged 14 years old one BO now enrolled at [particulars withheld] Secondary School in Form 2; that he has two other children CWA aged 11 years and MO aged 6 years who school at [particulars withheld] Primary School; that his youngest child suffers from sickle cell anaemia and requires constant treatment, care and monitoring; that the offender married the second wife with whom they separated and they had three children SAO, SA and JO; that the children live with their mother in Kisumu where she is working in a salon; that the accused used to indulge in taking alcohol a habit he has been trying to stop and that he is a christian occasionally attending church services on Sunday; that the victim was not at home when the offender came home at 9.00 pm on the material night; that he had earlier left money for supper to be given to the deceased but she had not returned having left with her friend informing her daughter that she had gone to charge her phone battery; that the offender explains that he went looking for her and found her intoxicated and unresponsive; that he admits beating her using a cane and with the help of a cousin he took her to the house but spent the night in a different room and was shocked when he checked on her in the morning and found out that she had lost her life.

That the offender regrets assaulting the deceased; that he wishes he would have handled the situation differently than the way he acted; that he prays for forgiveness and for a chance to be considered for a non-custodial sentence which will allow him to continue taking care of his children to whom he is the only parent; that he is concerned about the last born who is sickly and requires constant monitoring and medical attention; that he is the only son to his mother, his brother having died; that he is the only bread winner for his family.

The report further indicates that the community members are aware that both the accused and the deceased indulged in consumption of chang'aa and they would engage in physical fights on several occasions when intoxicated; that they strongly condemn gender based violence within the area and calls on couples to handle differences in a mature manner; that the offender did not intend to kill her; that they believe that the loss of life was just an accident; that the victim's family members are still bitter by the loss of their kin; that the children of the deceased have now become partially orphans who now wish that the court punishes the accused in a way that allows him to continue providing for them.

It was the view of the probation officer that the accused is not a security risk if released back to the community and that a probation sentence for a period of three (3) years is appropriate and that he be supervised by the Bondo Probation Office.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. Under Section 204 of the *Penal Code*, the punishment for murder is a sentence of death. However, following the decision of the Supreme Court in Francis Karioko Muruatetu & 2 Others Vs R (2017) eKLR, the mandatory nature of death sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter and that the courts could as well impose a sentence of death if the circumstances warrant it.
6. From the post mortem report produced by Dr. Rita Opondo (PW1) who conducted the autopsy on the body of the deceased stated that there were multiple facial bruises around the chin and forehead. That there was hemorrhagic congestion of the skull and left frontal parietal zone which was a sign of trauma; that there was no skull fracture noted; that she formed the opinion that the cause of death was head injury secondary to blunt trauma by a blunt object. She produced the autopsy report dated 21/7/2022 as Exhibit 1.

The circumstances under which the deceased died are rather tragic. The accused herein has confirmed vide the presentence report that indeed he assaulted the deceased after finding her lying by the road side drunk and that he took her home only to find her dead the following morning. However, the accused



son (PW2) testified that the accused drag the deceased into the house and that during the night he heard the deceased crying. Further the evidence of the investigating officer (PW4) is that he recovered some sticks that had been used by the accused to assault the deceased. Further, PW2 stated that the accused used a wet sponge to clean blood on the deceased's mouth and face and left her on the bed. It is noted that the accused did not bother to take her to hospital for treatment and therefore it became apparent that the accused left his wife of twelve years to die on their matrimonial bed without a care in the world. It also depicted the accused as a person who did not care for the deceased and who had gotten tired of the deceased's alcoholism and thus wanted to get rid of her. The conduct of the accused in killing his wife showed that he never loved or cared about her. It is unfortunate that he had to kill her yet he had the option of terminating his marriage with her if he was tired of the marriage but not kill her. The deceased therefore died a painful death. She did not deserve to die in the manner that she did.

As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu Vs. R (2011) eKLR, held as follows:

“ Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See Ambani Vs. R (1990) eKLR.”

7. It is noted from the presentence report that the probation officer has proposed that the accused be placed under probation so as to enable him take care of the children left behind by the deceased. It is instructive that the accused was aware of his responsibilities as a parent even when he decided to end the life of his wife of twelve years. The accused should not use the fact that the children have now become partial orphans so as to seek clemency from this court. His actions depict him as a dangerous person even to the children due to his ungovernable anger. I find that a custodial rehabilitation is necessary in the circumstances so as to enable him undergo comprehensive rehabilitation before being released back to rejoin his family. It is my considered view that the accused needs to serve some considerable period in custody before being allowed to serve under probation as proposed by the probation officer. The custodial rehabilitation is necessary to enable him take stock of his life and future of his children following the demise of the deceased.
8. It is noted that the accused herein managed to post bail soon after taking plea and therefore the application of Section 333 (2) of the *Criminal Procedure Code* will not apply and therefore the sentence to be imposed shall commence from the date of conviction namely 28/4/2025. I find that a custodial sentence of two years imprisonment and thereafter an order that the accused to serves under probation for three years is appropriate in the circumstances.
9. In the result, I order the accused herein JOO to serve a sentence of two (2) years' imprisonment which shall commence from the date of conviction namely 28/4/2025 and upon completion, he shall serve under probation for a period of three (3) years under the supervision of the Bondo Probation Office.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 17TH DAY OF JUNE, 2025.

D. KEMEI

JUDGE

In the presence of:

JOO.....Accused



Ooro F.....for Accused

M/s Kerubo.....for Prosecution

Okumu.....Court Assistant.

