



**Republic v Wambua (Criminal Case 22 of 2019)  
[2025] KEHC 10707 (KLR) (16 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 10707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL CASE 22 OF 2019**

**TM MATHEKA, J  
JULY 16, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JENNIFER NZIKU WAMBUA ..... ACCUSED**

**SENTENCE**

1. On 13/3/2025 Jennifer Nziku Wambua was found guilty and convicted of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). This was after court found that the charge of murder contrary to section 203 as read with section 204 of the same Act- had not been established for failure on the part of prosecution to establish malice afore thought.
2. Hence, the accused was found guilty of the unlawfully killing of Kennedy Mutunga Muasa, with whom they were living as husband and wife on 4/8/2019 at Shimo Estate in Wote Sub county Makueni County.
3. The penalty provided for by section 205 of the [Penal Code](#) is that a person found guilty of manslaughter is liable to imprisonment for life. Evidently that means that an accused person guilty on manslaughter can be imprisoned from one day to life imprisonment depending on the manner in which the offence was committed. It also means that the court has discretion to mete out the sentence the court considers to be suitable within the circumstance of the case before court.
4. The prosecution submitted that the accused is a 1<sup>st</sup> offender.
5. In mitigation Mr. Hassan for the accused person submitted that the accused had a 6 year old child- and urged the court to use its discretion to sentence the accused.



6. I sought a pre-sentence from Probation After Care Services. It was filed on 3/4/2025 - and the PACS Officer upon analysis of the situation concluded by stating that he was leaving it to the discretion of the court.
7. It is noteworthy that he did not make any proposal/recommendation as to the suitability or non-suitability of the accused person to a sentence on probation supervision. should the court consider a non-custodial option.
8. The Statute Law (Miscellaneous Amendment) Act, 2018 – amended *Probation of Offenders Act* Cap 64 Laws of Kenya to define a pre-sentence inquiry report as the report on an accused person on offender prepared by Probation Aftercare Service Officer under the *PO Act* in any other law for the purpose of criminal justice administration.
9. Section 4(8) of the Act States that –

“A pre-sentence report shall include a recommendation as to the suitable period of supervision; rehabilitation programmes and any other measures necessary to reduce the risk of re-offending”
10. It is clear that the Probation Aftercare Service Officer does not have the luxury of standing on the fence - the officer has the statutory duty in a pre-sentence report to do as the law requires.

In this case the officer did not comply with the law and he must do so.
11. To that extent the report does not answer to the name of a pre-sentence report as defined by the law.
12. It is evident that the officer took upon himself the weighing the views of the victims vis a vis the possibility that the accused could be placed on probation, and decided to sit on the fence. It is not easy to determine the source of this conflict when the law is so clear but it appears to me that the the Probation Aftercare Service Officer came to the conclusion that that a recommendation for a non-custodial sentence would not amount to justice to the family of the victim. That is not right.
13. On the other hand the officer is be obligated to also inform the court of any reasons as to why the accused person would not be suitable for a non-custodial sentence and to state so in the report.
14. The report captures the views of the family of the victim: the parents and siblings of the deceased. The Probation Aftercare Service Officer confirms what emerged from the trial that the accused and the deceased had baby together. They were cohabiting when they were students at Wote Technical. That both families were aware that the 2 had quarrels – and blame the accused for not raising the issue of the conflict with the families so that the families could assist to resolve. However it is clear that it is the wisdom of hindsight, and not very helpful at this time. What is evident is that we are all aware that this tragedy could have been prevented in so many ways. However right now, there is nothing much anyone can do.
15. The evidence before demonstrated that these two fought – none had started the fight with the premeditated idea of killing the other but one of them ended dead.
16. The report shows that the accused did not have a record, is held in esteem by the community which together and her family are willing to allow for her back in the society.
17. The accused is remorseful, is the mother of two young children, and her family was willing to go through restorative justice process with the family of the deceased.



18. Looking at the [Sentencing Policy Guidelines](#) 2023 the accused falls in the category of low culpability - as there was provocation, emotional distress and the act of killing was spontaneous. In addition the case has been in court since 2019- even if she has been out on bond – the fact that the outcome hand upon her is considered as part of the punishment. She has the 2 young children, she is taking care of, one of whom was an infant at the time of the offence.
19. The foregoing factors make her suitable for a non-custodial sentence. And although it is now rejected by the family of the deceased, a reconciliation process would allow healing and allow the child born between the accused and the deceased access her father’s family
20. The report by the Probation Aftercare Service Officer does not comply with Section 4(8) of the Act – the mandatory requirements: I order that the PACs officers avails a supplementary report with the requisite recommendation as to the suitable period of supervision; rehabilitation programmes and any other measures necessary to reduce the risk of re-offending.
21. Orders accordingly.

**16<sup>th</sup> July 2025**

Coram as before:

Court: I have perused the further PACS officer and the recommendation made therein,  
I have explained this order to the accused person and she is willing to comply.

1. The offender be and is hereby placed on Probation Supervision for three years. She will abide by the Probation order and the guidance provided under the supervision order.
2. The PACs office has undertaken together with the Ngwaata Loaction Administration to pursue reconciliation and restoration between the offender and the family of the deceased for the sake of the child of the deceased and the offender. The offender undertakes to cooperate with the PACs office by attending meetings and providing requisite information, and complying with resolutions that may be reached to that end.
3. The offender will attend the requisite counselling sessions as directed by the PACs officer.
4. In default of compliance the PACs officer is at liberty to inform the court for orders on breach of Probation Order.

**DATED SIGNED AND DELIVERED THIS 16<sup>TH</sup> JULY 2025**

**MUMBUA T MATHEKA**

**JUDGE**

CA Chrispol

Accused present

Mr. Hassan for the accused

Kazungu for the state

