



**State v MAO (Criminal Case E004 of 2025) [2025] KEHC 11128 (KLR) (29 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 11128 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E004 OF 2025**

**DK KEMEL, J**

**JULY 29, 2025**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**MAO ..... ACCUSED**

**SENTENCE**

1. The accused herein MAO has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. However, following a plea bargain agreement dated 16<sup>th</sup> April 2025, the charge of murder was substituted with a charge of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. The particulars were that on the 7<sup>th</sup> day of January 2025 at around 1030 hours in Adua village, Siaya sub County within Siaya County unlawfully killed one Joseph Onyango Ochieng. The accused pleaded guilty and was convicted accordingly.
2. The sentencing hearing proceeded on 18<sup>th</sup> July 2025. Mr. Odhiambo counsel for accused submitted inter alia; that the accused has entered into a plea agreement and has in the process saved the court’s precious judicial time; that she is a first offender; that the incident leading to the death of the deceased was an accident in which both sustained various degrees of burns; that the accused is a person living with HIV and is under constant medical care; that she is a single parent of five children; that her family has fallen apart for instance her fourteen year old child is claimed to have gotten married in Ahero in her absence while a thirteen year old daughter is in a children care home in Kisumu while the two younger children are with her in remand; that it would be in the best interest of the children that the accused be given a non-custodial sentence; that she is remorseful over the loss of her husband and that she has tried to reach out to her in-laws to express her apologies; that a custodial sentence should be the last resort despite the fact that the presentence report does not recommend a non-custodial sentence. That the presentence report seems to suggest that the accused does not merit a non-custodial sentence on the basis that her mother who is a scrap metal dealer has no means and which is discriminatory.



3. Counsel for Prosecution M/s Kerubo submitted inter alia; the fact that the accused is a first offender, a precious life was lost; that she fully associates herself with the sentiments of the probation officer; that the accused be given a custodial sentence to enable her learn.
4. This court called for a pre-sentence report by the probation department. The same is dated 6<sup>th</sup> July 2025 and 17<sup>th</sup> July 2025. The same indicates inter alia; the accused and the deceased married in the year 2017 and that they have three children; that the accused is a person living with HIV and is on medication; that on the material date the accused accidentally hit a shelf within the bedroom and that a solar battery slipped off and landed on the bed thereby spilling acid on the deceased head causing serious burns while some landed on her also on her face, arms chest and thighs; that both were taken to hospital; that the accused maintains that the incident was an accident and that she had not planned to murder her husband; that the family of the victim have indicated that the accused had earlier made threats and continues to do so while in custody that if she gets a chance for freedom she will go back and burn the children of her late husbands first wife and anybody who have actively been involved in this case including the entire family of the victim; that the clan elder and the area assistant chief confirmed that the accused and the deceased used to have frequent fights and that the deceased underwent a lot of frustrations in the hands of the accused such as confiscation of important documents like title deeds, stealing huge sums of money and taking loans using the deceased as a guarantor without his permission; that the accused had told everyone who cared to listen that she would kill her husband; that the accused had enticed the deceased to go to bed and sleep as he had come from night guard shift duties and then she poured acid and petrol on him and set him on fire; that the accused is reported to have purchased the acid and petrol earlier and hid them under the bed; that the community is very hostile to any comeback by accused who stands to be lynched by the irate public. It was the recommendation of the Probation officer that a non-custodial sentence is not suitable because the community is not ready to welcome her back.
5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence reports filed by the probation department. Under Section 205 of the *Penal Code*, the maximum sentence for manslaughter is life imprisonment. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others v R* (2017) eKLR, the mandatory nature of sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter.
6. As regards the sentence to be imposed, the Court of Appeal in the case of *Charo Ngumbao Gugudu v. 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 v. R* (1990) eKLR.”

It is noted from the autopsy report conducted on 3/2/2025 by Dr. Okongo Erick of Siaya County Referral Hospital indicated that the cause of death was multiple organ failure secondary to extensive burns. It is therefore clear that the deceased died a very painful death as he struggled for life at the hospital for three weeks before he succumbed to the injuries which were caused by severe burns. It has emerged from the presentence reports that the accused and the deceased lived a tumultuous marriage full of squabbles and fights. The reports also indicate that the accused had purchased some battery acid and petrol and placed them under the bed and that as soon as her husband arrived from night guard duties and who was oblivious of the accused’s intentions went straight to sleep and no sooner had he started enjoying his sleep, the accused went to work and removed the battery acid and petrol



and poured them on to the deceased and then struck a match stick leading to the deceased suffering severe burns. It is clear that the intention of the accused was to eliminate the deceased for reasons best known to herself. The reports also indicate that the accused had in the past issued threats to kill her husband. The report also indicate that the accused has issued further threats that she would eliminate members of the deceased family. I find that had the accused resorted to other channels of redress such as engaging the clan elders and the local administration or even file for divorce or separation, the deceased could be alive today. The deceased died thanks to the ill intentions of the accused. It is noted that the probation officer has recommended that a non-custodial sentence is not viable in view of the fact that the accused is not wanted in the area and that the irate villagers have made it clear that they will lynch her as soon as she sets foot in the area.

7. Mr. Odhiambo, learned counsel for the accused, has urged this court to grant a non-custodial sentence to his client on the ground inter alia; that she is remorseful and that the incident occurred as a result of an accident and that she is still willing to reach out to the deceased family members to apologize; that the accused has children who rely on her while the other two young ones are with her in prison; that the accused is a person living with HIV; that the accused should not be discriminated on the basis that her mother is a metal scrap dealer and unable to take care of her if released on a non-custodial sentence.
8. Looking at the circumstances of this case as well as those of the accused, it is clear that the accused committed a serious and heinous crime of killing her husband. It is also clear that circumstances of the accused at present appear to be quite tragic. Due to the hostility on the ground and the fact that the accused has issued threats that she will deal with the deceased's family members once released, I find that custodial rehabilitation for the accused is merited. The custodial rehabilitation will help to mould the accused into a better individual before being released back to the community. Due to the accused's health status and the fact that she has two young children with her in prison, I find that an order that she serves custodial sentence of 2 years and to serve under probation for three years upon release will be appropriate in the circumstances. The court has arrived at this finding after taking note of the fact that the accused has saved the court precious judicial time. The custodial sentence shall commence from the date of arrest namely 7<sup>th</sup> January 2025.
9. In the result, I order the accused herein MAO to serve imprisonment for two (2) years and thereafter to serve under probation for three (3) years.

**DATED AND DELIVERED AT SIAYA THIS 29<sup>TH</sup> DAY OF JULY 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

MAO ..... Accused

Odhimbo ..... for Accused

M/s Kerubo ..... for Prosecution

Okumu ..... Court Assistant

