



REPUBLIC OF KENYA



**Republic v Buruk (Criminal Case E016 of 2021)
[2024] KEHC 742 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E016 OF 2021
WM MUSYOKA, J
FEBRUARY 2, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMWEL OMBIMA BURUK ACCUSED

RULING

1. The accused person herein was convicted on 27th November 2023, of the manslaughter of Betty Akelo, on 6th 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 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 v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), has outlawed the death sentence, on grounds of unconstitutionality. That then leaves us with imprisonment as the next available penalty for serious felonies like murder. Life imprisonment is the maximum for manslaughter, which would mean that the penalty for murder is more or less the same as that for manslaughter. *Julius Kitsao Manyeso v Republic* Malindi CACRA No. 12 of 2021 (Nyamweya, Lesiit & Odunga, JJA)(unreported) declared life imprisonment unconstitutional, and *Evans Nyamari Ayako v Republic* Kisumu CACRA No. 22 of 2018 (Okwengu, Omondi & J. Ngugi, JJA)(unreported) translated life imprisonment to 30 years.
3. I called for a pre-sentence report. The probation office has compiled the report, and filed it on 19th January 2024, bearing an even date. It is generally favourable. None of the persons interviewed, being the father of the convict, his former employer and the local administrator had anything negative to say about him. He has no previous criminal record. He is said to be remorseful. I wonder at that, given



that in that report, the convict recounted, to the probation officer, a story completely different from his defence statement , and the confession that was recorded from him. In his defence, he said he had left the deceased at home, as he and PW2 escorted a visitor, and when he came back, the deceased was not at home. Her body was found in the well a day later. His confession, to the police, was that he had made sexual advances to the deceased, who rebuffed him, leading to a tussle, wherein he hit her with a fist on her head, whereupon she fell and died, and he disposed of her body, by putting it into the well. The version he told the probation officer was that he was at home with the deceased, who was washing clothes near the well, when a cow attacked her, and pushed her into the well. There can possibly be no remorse under the circumstances.

4. I have noted the circumstances of the commission of the offence, the written submissions 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 is a young adult. I have taken all these into account, balancing them against the fact that a human being lost her life most needlessly. In the circumstances, I shall give the convict a custodial sentence, of 25 years imprisonment. There is a right of appeal to the Court of Appeal, within 14 days, of this order. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 2ND DAY OF FEBRUARY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Oketch, Advocate for the convict.

