



**Republic v NOO (Criminal Case E011 of 2022)
[2024] KEHC 801 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E011 OF 2022
WM MUSYOKA, J
FEBRUARY 2, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

NOO ACCUSED

RULING

1. The accused person herein was convicted on 27th November 2023, of the murder of Silas Odhiambo, on 18th 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. There was initially some doubt as to whether the convict was an adult when the offence was committed on 18th August 2022, for he had stated, on 12th October 2023, when he made his defence statement, that he was in Standard 8 at primary school, and was aged 18. That suggested that, on 18th August 2022, he might have been 17 years old, or even less than that. I directed, on 20th December 2023, that a document on his age be availed, to guide me in sentencing him. A birth certificate, dated 30th September 2020, serial number 000XXXX34, has been placed on record. It indicates his date of birth as 2nd March 2003. That would mean that on 18th August 2022, when the offence was committed, the convict was 19 years 5 months and 16 days old. He was an adult when he committed the offence, and I shall treat him as such for purposes of sentencing. At that age he was a young adult, and that should count.
3. 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.

4. I called for a pre-sentence report. The probation office has compiled the report, and filed it on 15th December 2023, bearing an even date. It is generally favourable. It would appear that the convict was a person of commendable character, not largely unexpected for a primary school pupil, although he was overage. The family of the victim indicates that it moved on. Both the family of the victim and the father of the convict indicate that the 2 families sat, and agreed to task the family of the convict with responsibility for the burial expenses, inclusive of mortuary fees. The father of the victim has left the matter of sentence in the hands of the court. The convict is indicated as remorseful, and urges the court to consider a probation order, to enable him go on with his education.
5. The facts presented by the prosecution and the defence differed significantly on what transpired when the convict and the group which included the deceased met, in terms of which side was the aggressor. It is common ground, however, that the deceased was stabbed, with an object that was in the possession of the convict. Where that object came from was contested, but I believed the version by the prosecution. A person lost a life in that unfortunate encounter. Both the convict and the deceased were young persons, and the fatal confrontation must have been fuelled, to an extent, by youthful exuberance. I take note of the fact that the convict was a young adult, who had just attained majority age. He was a primary school pupil then, no doubt with the mindset expected of a child or pupil in Standard 8. There is nothing negative about him, in the pre-sentence report placed on record. I should consider a sentence commensurate with those circumstances. This is a conviction for murder, and a non-custodial sentence would not suffice. The convict worries about his education. However, education facilities are available in prison custody.
6. I have noted the circumstances of the commission of the offence, the statements made 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 was a young adult at the time of the commission of the offence. I have taken all these into account, balancing them against the fact that a human being lost his life. In the circumstances, I shall give the convict a custodial sentence, of 15 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. Ouma, Advocate for the convict.

