



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Wamalwa (Criminal Case E030 of 2022)  
[2023] KEHC 3074 (KLR) (14 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3074 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E030 OF 2022**

**DK KEMEL, J**

**APRIL 14, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GEOFFREY NAMUKANI WAMALWA ..... ACCUSED**

**RULING**

1. Geoffrey Namukani Wamalwa alias Wajackoya had initially been charged with an offence of murder contrary to section 203 as read with Section 204 of the [Penal Code](#) with the particulars being that on the 22<sup>nd</sup> day of September 2022 at Lumuli Market Magemo sub- location, Ndivisi Location Webuye East sub County within Bungoma County he murdered Douglas Khamala Juma Alias Kakai.
2. The charge against the accused herein was later reduced to one of Manslaughter following a plea bargain agreement dated November 28, 2022. The court duly accepted the said plea agreement pursuant to the provisions of Section 137H of the [Criminal Procedure Code](#) and that it satisfied itself on the factual basis of the plea agreement and that the accused was competent, of sound mind and had acted voluntarily in accordance with Section 137G of the [Criminal Procedure Code](#).
3. The new charge of Manslaughter Contrary to Section 202 as read with Section 205 of the [Penal Code](#) was subsequently preferred against the accused herein. The particulars are that on the 22<sup>nd</sup> day of September 2022 at Lumuli market Magemo Sub-location, Ndivisi Location, Webuye East Sub-location County within Bungoma County he unlawfully caused the death of Douglas Khamala Juma alias Kakai.
4. The facts in support of the charge as disclosed in the plea agreement dated 28.11.222 are that on the September 22, 2022 at around 8.00 pm the deceased herein Douglas Khamala Juma alias Kakai was seated and taking porridge at Lumuli trading center. All of a sudden the accused herein started attacking one Eric Matandiko with a knife for unknown reasons . The deceased tried to intervene and



that is when the accused turned against him and stabbed him on the left rib cage and ran away. Members of public gave chase and caught up with him and that the knife believed to be the assault weapon was recovered from him. The deceased was rushed to Friends Lugulu Mission Hospital but unfortunately died while undergoing treatment. The body was transferred to the mortuary. The accused was rescued from the irate mob and handed over to Misikhu Police Post. On September 26, 2022 a post mortem was conducted on the body of the deceased by Dr Nyongesa who formed the opinion that the cause of death was cardiopulmonary arrest due to hemothorax secondary to a penetrating sharp object as a result of physical assault. The accused was later subjected to a mental assessment and was found fit to stand trial. He was charged with murder which was substituted with the offence of manslaughter. The recovered kitchen knife and post mortem report form were produced as Exhibits 1 and 2 respectively.

5. The accused admitted the charge and further knowingly, voluntarily and truthfully admitted the facts read out herein. He was duly convicted on his own unequivocal plea of guilty.
6. During the sentence, hearing, Miss Wakoli for the accused first pointed out the fact that the letter dated April 12, 2023 by the County Probation Officer seeking for more time to conduct a social enquiry report on the accused but who has gone a head to hint that the accused has no known fixed abode which would seriously limit the probation officers in terms of community supervision. Learned Counsel submitted that in view of the probation officer's comments then there was no likelihood of a non-custodial sentence being anticipated. She submitted that the accused is remorseful and that he is a 20 year old young man with a full life ahead of him. She submitted that the offence was not intentional and he seeks for leniency. It was finally submitted that the accused has been in custody all along and that he will reflect on the incident and reform on his actions.
7. Mrs Mukangu for the prosecution submitted that the court do take into account the fact that the accused has pleaded guilty to a lesser offence and hence has saved judicial time. She sought for a custodial sentence so as to assist him in his reform and rehabilitation. It was pointed out that the accused caused the death of the deceased who was trying to prevent him from doing a mistake and that he deserves a sufficient lengthy custodial period for purposes of reform and rehabilitation.
8. The court called for a pre sentence report but the County probation officer vide his letter dated April 12, 2023 sought for more time but pointed out that the accused has no known fixed place of abode as he hails from a dysfunctional family whereby his father resides in Mombasa and who is not willing to bother about the accused while the mother has since deserted the home and got married elsewhere. The probation officer hinted that the accused's circumstances seriously limits options in terms of community supervision. Similar sentiments had been raised in a pre – bail report dated 25.11.22 which established that the accused was not suitable for bond admission due to the hostile environment and lack of a functional family unit.
9. I have given due consideration to the submissions of learned counsels as well as the sentiments of the County Probation Officer Bungoma. Under Section 205 of the [Penal Code](#) Manslaughter is punishable by a maximum sentence of life in prison. However, this represents the maximum , sentence which is usually reserved for the worst of such cases. This does not appear to fall in the category of the most heinous examples of manslaughter as regards the circumstances of the accused herein. The circumstances of the offence appear to me to be tragic and unintended since the accused was at the time engaged in a fight with another person by the name Eric Matandiko only for the deceased to intervene and try to save the said Eric Matandiko from being harmed by the accused only for the accused to stab the deceased on the rib cage causing his death . The accused in arming himself with a knife, appear to indicate that he was out to harm somebody and hence it is quite possible that had the deceased not intervened the said Eric Matandiko could have been killed by the accused with the same weapon. It is possible that the accused intended to seriously harm the said Eric Mantandiko and that the killing



- of the deceased was not intended by the accused. I am inclined to rule out life imprisonment for the accused.
10. Case law could be the starting point in determining a custodial sentence for manslaughter since the Judiciary Sentencing Guidelines are silent on the path to take in manslaughter instances. Currently, the said guidelines are being reworked with a view to having them anchored in law. In the case of [\*VMK -vs R\*](#) (E2015) EKLK ten years imprisonment was given for manslaughter. When a dangerous weapon is used in the commission of the crime, courts are more likely to sentence the offender to life in prison. However, the circumstances of each case must be taken into consideration. For instance, in the case of [\*Republic -vs- Daniel Okello Raupch\*](#) (2017) Eklr a sentence of twelve months imprisonment was meted out on a man who killed another on allegation of being involved in an illicit love affair with his girl friend. The facts in the present case are that the accused had started attacking somebody else which prompted the deceased to try and intervene only for the accused to turn against him and stabbed him before running away with the assault weapon. It seems the accused was incensed by the intrusion of the deceased and decided to transfer his anger on him. The action by the accused were unwarranted. Had he controlled his anger the deceased could probably be alive today. The conduct of the accused in walking around with a knife left no doubt that he intended to cause harm to his victims. It transpired that the accused out of the blues, attacked one Eric Mantandiko and which attracted the deceased to the scene and who wanted to rescue the said Eric Mantandiko only for him to be viciously attacked by the accused. The circumstances revealed the accused as a person who is a danger to the society due to his conduct in walking around while armed with a knife. Such kind of conduct must be discouraged and hence the need for a custodial sentence.
  11. The accused has sought for leniency regarding the incident. The Court of Appeal in [\*Charo Ngumbao Gugudu -vs- Republic\*](#) (2011) EKLK held as follows:-

“Further the law is that sentence imposed on an accused persons must be commensurate in the moral blame worthiness of the offender and that it is thus not proper exercise for the court to fall to look at the facts and circumstances of the case in their entirety before setting for any given sentence – See *Ambani -vs- Republic* (1990) eKLR.”
  12. From the postmortem report produced as exhibit 2, the injuries inflicted on the deceased comprised of left side hemothorax with lung collapse as well as laceration on the chest. The opinion of the pathologist is that the cause of death was Cardio pulmonary arrest due to left hemothorax Secondary to penetrating sharp object as a result of physical assault. The injuries inflicted by the knife which was produced as exhibit one were severe as it transpired that the deceased died the same day while undergoing treatment. The act of the deceased trying to intervene was one of patriotism and that he did not deserve to die. Had the accused lessened his knife wielding conduct then the incident could have been avoided. The accused seemed to have found deceased as an intruder in his dealings with he said Eric Matandiko and decided to get rid of him by stabbing him to death. The accused thus took the law into his hands.
  13. The accused has been in custody since the time of his arrest to date. Learned counsel for the prosecution has urged the court for a custodial rehabilitation for the accused. Indeed, the circumstance of the offence together with the accused’s family background warrants a custodial rehabilitation for the accused herein. He will surely benefit from the same despite the fact that he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him into a better person before being released back to the society.
  14. In view of the foregoing observations, I order the accused herein Geoffrey Namukani Wamalwa alias Wajackoya to serve imprisonment for a period of ten (10) years which shall commence from the date of his arrest namely September 22, 2022.



DATED AND DELIVERED AT BUNGOMA THIS 14<sup>TH</sup> DAY OF APRIL 2023.

D Kemei

Judge.

**In the Presence of:-**

Geoffrey Namukani Accused

Miss Wakoli for Accused

Miss Mukangu for Prosecution

Kizito Court Assistant

