



**Republic v Angasa (Criminal Case 45 of 2019)
[2023] KEHC 20562 (KLR) (7 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 20562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE 45 OF 2019
REA OUGO, J
JULY 7, 2023**

BETWEEN

THE REPUBLIC PROSECUTION

AND

VINCENT MOMANYI ANGASA ACCUSED

SENTENCE

1. Vincent Momanyi Angasa was charged with the murder of Wilter Bosibori his wife. In a judgment dated March 17, 2023 I found him guilty and convicted him of the charge of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The accused is a first offender. A pre-sentence report dated June 2, 2023 recommends a lenient custodial sentence for the sake of the children. He is 33 years old. The report indicates that he had a domestic issue with his wife. He is said to be remorseful and seek leniency. His family states that his children need him. The report does not indicate if the children were interviewed by the probation officer.
3. Counsel for the accused in mitigation pleaded with the court to give the accused a non-custodial sentence. She urged the court to note that the accused's children are in the custody of a guardian and that the accused should be given a chance to look after his children.
4. I have considered the guidelines and objectives on sentencing, the fact that the accused is a 1st offender, the circumstances of the commission of the offence, the age of the accused, his character of the accused. I have also considered the period he has spent in custody, about 3 years and half.



5. In petition No15 & !6 of 2015, *Francis Karioko Muruatetu & another v Republic & others* [2017 eKLR the Supreme Court stated as follows;

(48) Section 204 of the Penal Code deprives the Court of the use of judicial discretion in a matter of life and death. Such law can only be regarded as harsh, unjust and unfair. The mandatory nature deprives the courts of their legitimate jurisdiction to exercise discretion not to impose the death sentence in appropriate cases. Where a court listens to mitigating circumstances but has, nonetheless, to impose a set sentence, the sentence imposed fails to conform to the tenets of fair trial that accrue to accused persons under articles 25 of the *Constitution*; an absolute right . . .

(69) Consequently, we find that section 204 of the Penal Code is inconsistent with the *Constitution* and invalid to the extent that it provides for the mandatory death sentence for murder. For the avoidance of doubt, this decision does not outlaw the death penalty, which is still applicable as a discretionary maximum punishment . . .

6. Murder a serious offence and the sentence provided in law is a death penalty even though I recognize that this court has the discretion to give the accused a custodial or non-custodial sentence. 6. Considering the events which led to the death of deceased and that an innocent life was lost in a cruel manner, in my view the accused does not deserve a non-custodial. I sentence the accused person to 15 years imprisonment. He has a right of appeal within 14 days.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 7TH DAY OF JULY 2023.

R. E. OUGO

JUDGE

IN THE PRESENCE OF:

MR. AYODO- STATE COUNSEL - PRESENT

MISS GOGI - ABSENT

ACCUSED VINCENT MOMANYI ANGASA – PRESENT.

APHLINE – C/A

