



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wandabi (Criminal Case E035 of 2022)
[2023] KEHC 19760 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E035 OF 2022**

PJO OTIENO, J

JULY 7, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

AMBROSE NYONGESA WANDABI ACCUSED

RULING

1. Ambrose Nyongesa Wandabi (“the accused person”) was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on the 31st day of July, 2022 at Binyenya location in Likuyani sub-county within Kakamega County, the accused person murdered Daisy Chepkirui.
2. By way of a plea agreement signed by the accused person on December 14, 2022 and filed in court on the same day, the accused agreed to plead guilty to the lesser offence of manslaughter resulting to the plea agreement being adopted by this court on the same date. The charge of the offence of manslaughter and its particulars were then read to the accused in Swahili language and the accused admitted the facts and was then convicted on his own plea of his guilt.
3. Upon conviction the court called for a presentence report but when the probation officer interviewed him for the purpose he hinted the intention to retract the plea. The accused then wrote to the Deputy Registrar and asked to be allowed to withdraw the plea.
4. The court is now called upon to determine the request to by the accused contained in the letter dated 21/3/2023 and filed in court on 29/3/2023, in which the accused seeks to retract the plea agreement for his ‘own personal reasons’.
5. The procedure for recording a plea of guilt is outlined in section 207 of the *Criminal Procedure Code* (Cap 75) which states as follows: -



- (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty or guilty subject to a plea agreement.
- (2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

.....”

6. These steps were demystified by the Court of Appeal of East Africa in [Adan v Republic](#) [1973] EA 445 where it was held as follows; -

“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to “not guilty” and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused reply must, of course be recorded.”

7. The court is in no doubt that the law under section 207 [Criminal Procedure Code](#) as interpreted in the case of [Adan v Republic](#) [1973] EA 445 were applied to the letter in recording the plea. That notwithstanding however, it is also trite that the accused has the liberty to retract his plea at any time even after conviction provided the sentence has not been pronounced. In making that determination I am guided by the decision of the Court of Appeal in [John Muendo Musau v Republic](#) [2013] eKLR where it was held as follows: -

“We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and has been convicted for, the court must enter a plea of not guilty. That is to say that, an accused can change his plea at any time before sentence...”

8. That being the law, it is the finding by the court that the accused’s plea of guilt for the offence of manslaughter is hereby retracted and thus the plea stands set aside together with the plea agreement and in place of the said plea is substituted a plea of not guilty for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). This matter shall now be set down for hearing.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7TH JULY 2023.

PATRICK J. O. OTIENO



JUDGE

In the presence of:

Ms. Chala for the Prosecution/State

Mr. Mburu for the Accused

Court Assistant: Polycap

