



**Republic v Rotich (Criminal Case 43 of 2023)
[2024] KEHC 16040 (KLR) (Crim) (17 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 16040 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 43 OF 2023
CM KARIUKI, J
DECEMBER 17, 2024
FORMERLY NYAHURURU HIGH COURT CRIMINAL CASE NO E006 OF 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

GRACE CHEPKEMOI ROTICH ACCUSED

SENTENCE

1. The Accused person, Grace Chepkemoi Rotich, was charged with the offense of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) (Cap 63 of the Laws of Kenya).
2. Particulars being that on the night of 12/4/2023 at Simboiyon Sub-Location Subukia Sub-County within Nakuru County, there was a murder of Francis Rotich Kipkemoi.
3. She pleaded guilty to the charge, and the matter was fixed for pre-trial directions. However, the parties (Accused and Prosecution) side entered into a plea bargain exercise culminating with an agreement (plea agreement).
4. This led the Prosecution to seek leave of the court to substitute the charge of murder for that of manslaughter.
5. The accused pleaded guilty to the lesser offense of manslaughter and admitted the facts on record.
6. The court convicted the accused on her plea. Facts leading to the admission by the accused were as follows;
7. The facts are that the deceased and the accused had been married and blessed with a family, and on the 11th of April 2023, the accused left for church and returned home at around 6.30 p.m. and met



- the deceased, who started quarreling with her for coming home late and insisted she returns to the church. They talked for a while, and he cooled down. She later prepared supper, and they both fed and returned to bed.
8. The following day, on the 12th of April 2023, around 8:00 p.m., after taking supper, the deceased revisited the last issue as to why the accused had come home late the previous day after church service. She informed him that they had settled the matter, but he proceeded to quarrel with her, and she left him in the sitting room and went to bed. The deceased then followed her and asked her to get back to her parent's home, to which she told him it was at night. At that moment, the deceased picked a slasher that was on the wall and hit her on the left side of the head. Much blood was oozing from her head, which prompted her to stand up and then push the deceased, who fell backward on the floor and was hit on his head. Whereby he became unconscious and was rushed to Kwa Maiko Nursing Home at Subukia by relatives who lived nearby and who had been called by the accused, but he unfortunately succumbed.
 9. The accused was also treated at the same facility and later taken at Nyahururu Referral Hospital, but she was not issued with a P3 form.
 10. A post-mortem was later conducted on the deceased's body by Dr. Felix Masongo on the 17th of April, 2023, who opined that the cause of death was severe head injury with extensive subarachnoid hemorrhage secondary to blunt head trauma secondary to fall/assault during a domestic scuffle.
 11. The accused was arrested on the 13th of April, 2023, and subsequently charged with the offense of murder, which has now been reduced to manslaughter to which offense she has now pleaded guilty to an offense of murder is now being substituted with that of manslaughter after a successful plea bargain.
 12. The Plea Agreement The bottom line of the content of the facts is that the accused, who was the wife to the deceased, was attacked by a slasher whereof she bled profusely and to escape the attack, she pushed the deceased, who fell on the floor and was hit on his head whereby he became unconscious. She called relatives who rushed him to Kwa Maiko Nursing home at Subukia, where he succumbed.
 13. The act of the deceased was apparently unprovoked and unjustified in attacking.
 14. The accused (the wife) just returned home at 6:30 p.m. from the church on what the victim termed as being late.
 15. The act of the accused prima facie borders both accident and self-defense and self-rescue.
 16. It does not even, by any estimation, amount to manslaughter, as the facts do not disclose an offense.
 17. The ingredients of manslaughter in Kenya include: Unlawful act: The accused intentionally committed an unlawful act. This act must be dangerous or involve a significant risk of injury to the victim. Culpable negligence: The accused's act or omission constituted culpable negligence. No malice aforethought: The accused did not act with malice aforethought.
 18. section 202 (1) [Penal Code](#) which defines the offence of manslaughter as:

“ Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed as manslaughter.”
 19. Self-defense can be a complete defense to criminal liability, but there can be a fine line between self-defense and manslaughter. If you use deadly force in self-defense, there will be an investigation to determine if your actions were justifiable self-defense or manslaughter.



- 20. Here are some things to consider: The nature of the attack: The seriousness of the attack determines what is reasonably necessary in self-defense. For example, a minor attack would not justify a disproportionate retaliation. The circumstances: The particular facts and circumstances of the situation will determine what is reasonable. The burden of proof: The prosecution has the burden to negate self-defense. In Kenya, the *Penal Code's* Section 17 provides for the defense of self-defense.
- 21. Thus, the court finds that the only conclusion this court can make is an order of acquittal and dismiss the charges.
- 22. The accused did not deserve to be charged and locked as she had also suffered the loss of her husband.
 - i. Charges of manslaughter are dismissed.
 - ii. Accused is acquitted of the offense of manslaughter
 - iii. She shall be released forthwith unless otherwise lawfully held.

RULING ON SENTENCING, DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 17TH DAY OF DECEMBER 2024

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C. KARIUKI
JUDGE

