



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO E019 OF 2022

REPUBLIC.....ODPP

VERSUS

SUSAN NYAMBURA NDUNG'U.....

ACCUSED

SENTENCE RULING

1. Ms. **Susan Nyambura Ndung'u** you were arrested on the on the 8th April 2022, arraigned before this court and charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on the 28th February 2022 at Tayari Location, Molo Sub-County within Nakuru County, murdered **Fredrick Kahiro Gichini**.
2. After a trial of **eight (8)** Witnesses and **Sixteen (16)** exhibits constituting Exhibits **1a, 1b, 1c, 1d, (2i -2x), 3 and 4** in support of its case the court found you with a case to answer and placed you on your defense and gave sworn evidence without calling any witnesses.
3. The Court found that the case of murder against you had not been proven beyond reasonable doubt and proceeded to find you guilty and convicted you for a lesser offence of manslaughter.

4. The Court afforded the Defence an opportunity to mitigate while calling for preparation of a pre-sentence inquiry report.
5. Mrs. Elizabeth Kwamboka, Probation Officer, Nakuru undertook the inquiry and prepared her report dated 29th October 2025 which report is Information was obtained from the accused, her family, family of the victim, neighbors and the local administration. The report is generally favorable to the accused as follows;
 - a) That the accused is a 28-year-old man who regrets his action attributing the same to severe provocation and self defence of an intruder he found in bed with his wife and that it was a spur of the moment act.
 - b) The Accused had no prior criminal record and the views of the neighborhood where he resides were that he never has a history of alcohol or drug abuse and that the local administration indicated that they would have no problem in his alternative rehabilitation and reintegration back to society
6. In the entire trial the family of the victim participated and they are of the view that they had never been contacted by the family of the accused and they seek justice from the court.
7. **Section 204** of the **Penal Code** provides that a conviction of murder attracts a death sentence. However, the Supreme Court of Kenya in ***Francis Muruatetu & Another vs Republic [2017] eKLR*** in finding

that the mandatory nature of the death sentence to being unconstitutional stated that:-

“58 We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the Penal Code unfair thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of the constitution”

8. This court has considered the circumstances of the offence as was held in **Charo Ngumbao Gugudu -vs- Republic (2011) eKLR** where the Court of Appeal 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.**”*

9. This court is bound to and incorporates the **Sentencing Policy Guidelines 2023** vide **Gazette Notice No 11587** of **1st September 2023** set out the sentencing principles.

10. The principles of "Sentencing an offender" were clearly stated in the case of **Dakle Hussein Vs Republic Criminal Appeal No. 1 of 2015 [2015] eKLR** to include;

***Retribution;** to punish the offender for his or her criminal conduct in a just manner;*

***Deterrence;** to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences;*

***Rehabilitation;** to enable the offender reform his criminal disposition and become a law-abiding citizen.*

***Restorative justice;** to address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities and offenders needs and justice demand that these are met. Further to promote a sense of responsibility through the offender's contribution towards meeting the victim's needs.*

***Community protection;** to protect the community by incapacitating the offender. I submit that I have been incapacitated for long.*

***Denunciation;** to communicate the community's condemnation of the criminal conduct.*

11. The court has equally considered the mitigation that she is a mother of six (6) currently in various children's homes she urges for a non-custodial sentence.
12. This court is alive to the far-reaching effect of the conduct of the accused upon the victim and his family and the trauma they continue undergoing, She fled to Kinama Kajiado and had to be arrested after sometime and that she has been in remand for the last two and a half years notwithstanding the circumstances the accused was not meant to take away the life of the deceased and the extent of violence and injuries inflicted call for a sentence that is retributive, a deterrent and for general community protection. The impact of the loss of life in this instance shall have a far-reaching effect upon the family.
13. The Circumstances of the incident on the material day when the offence was committed and previous incidents as has been exhibited in defence is indicative of the violent relationship pre-existing that has resulted in over five prior complaints being made to the police.
14. The Post-Mortem report revealed that the deceased died of a single blow to the head causing haematoma secondary to blunt force on right side of head, excessive bleeding (fracture site right femur). To this court this is indicative of the guilt that the accused shall have to live with which aspect has influenced the court lean towards imposing a custodial sentence.

15. Justice must be served for the lost life of. Life is sacrosanct and sanctified. It must be protected, respected and enjoyed as a right whether naturally or constitutionally.
16. However, Ms, Susan Nyambura Ndung'u you will have to atone for your sin, accordingly, having convicted you of the offence of **manslaughter contrary to Section 202 as read with 205 of the Penal Code**, I hereby impose upon you a Ten (10) years sentence.
17. There will be a custodial imprisonment for Five (5) years. Plus, an additional non-custodial sentence of five (5) years to be supervised by the Probation department which sentence will run from today.
18. For the avoidance of doubt, the period the Accused person spent in custody Awaiting trial and after conviction awaiting sentence is hereby taken into account while computing this sentence in line with **Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya)**.
19. The Imprisonment Sentence Shall run from 8th April 2022.

It is so ordered.

**Dated, signed and delivered at Nakuru
on this 19th day of January, 2026.**

Mohochi S.M.

JUDGE