



**Republic v Wayodi (Criminal Case E013 of 2023)  
[2026] KEHC 362 (KLR) (23 January 2026) (Sentence)**

Neutral citation: [2026] KEHC 362 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E013 OF 2023**

**DK KEMEL, J**

**JANUARY 23, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**LAWRENCE ODUOR WAYODI ..... ACCUSED**

**SENTENCE**

1. The accused herein Lawrence Oduor Wayodi was charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on the material day 12<sup>th</sup> April 2023 at Sirongo village in Kakumu Kombewa in Alego Usonga within Siaya County murdered Erick Otieno.
2. Vide a judgment dated 25/11/2025, the the accused herein was found guilty of the offence of manslaughter and convicted accordingly.
3. Sentencing herein took place on 14/1/2026. Learned counsel for the defence submitted that the accused is remorseful over the incidence; that he regrets the same; that he is a first offender and prays for a non-custodial sentence; that he cooperated with the authorities; that he has spent a lot of time in custody and had time to reflect on the incident; that he prays for a non-custodial sentence.
4. Learned counsel for the prosecution submitted that the prosecution is not opposed to a non-custodial sentence.
5. The court called for a Pre-sentence report which was duly filed by the County Probation Officer. The same is dated 11<sup>th</sup> December 2025. The report indicates inter alia; that on the fateful day, the deceased returned home while intoxicated as he had consumed alcohol and went to offender’s house to borrow ten shilling which the offender did not have and that the offender walked out to get flour as he was then preparing a meal; that upon returning, he noticed that a kitchen knife he was using to slice tomatoes and onions a few minutes ago was missing from where he had placed it; that he noticed his deceased’s



mood had changed and upon keen observation, he realized that the deceased had the knife tucked in his waist; that a verbal exchange ensued which culminated in a tussle over the knife and which resulted in the stabbing of the deceased by the offender in self defence; that the deceased collapsed outside the door to his house as the offender retired to bed and that the deceased was discovered the following morning having succumbed to the stab wounds; that the offender is remorseful and maintains that he did not intend to stab his brother but that he was defending himself due to the fact that the deceased had become too much of a nuisance as he was then bullying him; that the family of the offender are ready to receive him back and help him re-integrate into the society; that the offender had been the pillar and the bread winner for the family including the deceased; that the family is aware about the deceased's frequent abuse of alcohol and constant harassment of the offender; that the community are of the view that the offender should be given an opportunity for rehabilitation and likewise the local administration are supportive of such decision. It was the opinion of the probation officer that the offender be given a chance to serve a non-custodial sentence under probation.

6. I have considered the oral submissions of learned counsels as well as the pre-sentence report. Under Section 205 of the Penal Code, the punishment for manslaughter is life imprisonment. This is the maximum sentence and which is imposed for the worst of offenders. In the case of Francis Karioko Muruatetu & 2 Others (2017) eKLR, the Supreme Court held that the mandatory nature of death sentence in murder cases was unlawful and that courts should receive mitigating circumstances from offenders before imposing an appropriate sentence thereafter. The court went further to add that the court could still impose a sentence of death if the circumstances warrant it. Hence, applying the said foregoing guidelines mutatis mutandis the present case, I find that this court upon consideration of the circumstances as a whole can impose the maximum sentence of life imprisonment if the circumstances warrant it.
7. The circumstances leading to the death of the deceased are rather tragic as it transpired that the deceased who frequently abuse alcohol arrived home while heavily intoxicated and confronted the accused while demanding to be given Kshs10/= but the accused informed him that he did not have it and who left him in the house as he went outside to fetch some maize flour only to return and find that the deceased had snatched a kitchen knife which he was using to cut vegetables. The accused thus confronted the deceased demanding for the knife and that a scuffle ensued wherein the deceased ended up being stabbed. The accused left the deceased in his house and retired to bed only to find him in the morning already dead. That the police visited the scene and found that the deceased had five stab wounds on the left side of the chest. It seems these stab wounds were so severe and which did not give the deceased a chance to survive. The deceased was examined by Dr. Eric Okong'o (PW3) who noted presence of stab wounds on the left side of the chest, one at the 3<sup>rd</sup> and 4<sup>th</sup> ribs while the 2<sup>nd</sup> stab wound was on the 5<sup>th</sup> and 6<sup>th</sup> ribs on the anterior chest wall. He also noted a stab wound on the right rib cage on the 3<sup>rd</sup> and 4<sup>th</sup> ribs as well as a stab wound on the upper pubic area and also noted massive blood within the abdomen and that the spleen was ruptured. The said pathologist formed the opinion that the cause of death was severe hemorrhage secondary to spleen rupture. Indeed, this was a very tragic incident whereby the deceased died a very painful death. Had the accused resorted to other methods of redress in obtaining the kitchen knife from the deceased, the deceased could have not lost his life. Even though the family and the community as well as the local administration pointed out that the deceased had been a serious alcoholic and also abused drugs and frequently harassed the accused, and further that even if the deceased was a social misfit, he did not deserve to die as he was entitled to live his life howsoever he wanted it and ought to have been left to his own devices but not to be killed. Hence, a precious life was lost thanks to the accused's lack of patience with the deceased.
8. A perusal of the pre-sentence report reveals inter alia; that on the fateful day, the deceased returned home while intoxicated as he had consumed alcohol and went to offender's house to borrow ten shilling



which the offender did not have and that the offender walked out to get flour as he was then preparing a meal; that upon returning, he noticed that a kitchen knife he was using to slice tomatoes and onions a few minutes ago was missing from where he had placed it; that he noticed the deceased's mood had changed and upon keen observation, he realized that the deceased had the knife tucked in his waist; that a verbal exchange ensued which culminated in a tussle over the knife and which resulted in the stabbing of the deceased by the offender in self defence; that the deceased collapsed outside the door to his house as the offender retired to bed and that the deceased was discovered the following morning having succumbed to the stab wounds; that the offender is remorseful and maintains that he did not intend to stab his brother but that he was defending himself due to the fact that the deceased had become too much of a nuisance as he was then bullying him; that the family of the offender are ready to receive him back and help him re-integrate into the society; that the offender had been the pillar and the bread winner for the family including the deceased; that the family is aware about the deceased's frequent abuse of alcohol and constant harassment of the offender; that the community are of the view that the offender should be given an opportunity for rehabilitation and likewise the local administration are supportive of such decision. It was the opinion of the probation officer that the offender be given a chance to serve a non-custodial sentence under probation.

9. Regarding the sentence to be imposed, it is noted that the maximum sentence for manslaughter is life imprisonment. It is trite that the sentence to be imposed must reflect the moral blameworthiness of an offender and that the court must take into consideration all the facts and circumstances of the case. Indeed, the accused had the option of not confronting the deceased over the knife and should have avoided an encounter with the deceased who he had known in the past to be troublesome. Even though the accused claims that he was defending himself, it is noted that had he not confronted the deceased, the incident could not have happened and that the deceased could be alive today. It is also noted that the accused is the only bread winner for the family and that even the deceased depended on him for support and that the community and the local administration are willing to receive him back and assist him to re-integrate in the society. It is also noted that the accused has been in custody since the date of his arrest and that it is believed that the period spent in custody has somewhat enabled him to atone for his sins as well as learned lessons. Further, the fact that he killed his own brother will continue to haunt him for the rest of his life. Looking at the circumstances of this case, I find that the accused does not deserve the maximum sentence since he is a first offender. All these factors will be taken into consideration in the imposition of the sentence.
10. As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu Vs. R [2011] eKLR held as follows:

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See Ambani Vs. R [1990] KLR”
11. According to the Judiciary Sentencing Policy Guidelines (2023), sentencing of offenders should take into account the following objectives:
  - a) Retribution - To punish the offender for their criminal conduct in a just manner.
  - b) Deterrence - To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
  - c) Rehabilitation - To enable the offender to reform from his/her criminal disposition and become a law-abiding person.



- d) Restorative justice - To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.
- e) Community protection - To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- f) Denunciation - To clearly communicate the community's condemnation of the criminal conduct.
- g) Reconciliation - To mend the relationship between the offender, the victim and the community.
- h) Reintegration - To facilitate the re-entry of the offender into the society.

Upon consideration of the foregoing, I find that the accused merits to be placed on probation for a period of three years.

12. In the result, I order the accused herein Lawrence Oduor Wayodi to serve under probation for a period of three (3) years. That while under probation, he shall adhere to the probationary terms and conditions failing which the probationary order shall be cancelled and that he shall be ordered to serve custodial sentence for the whole period regardless of any period already served under probation.

**DATED AND DELIVERED AT SIAYA THIS 23<sup>RD</sup> DAY OF JANUARY 2026.**

**D. KEMEI**

**JUDGE**

In the presence of:

Lawrence Oduor Wayodi.....Accused

M/s Akinyi.....for accused

Soita.....for Prosecution

Maureen/Kimaiyo.....Court Assistant

