

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO. E006 OF 2024

REPUBLICDIRECTOR OF PUBLIC PROSECUTIONS**
VERSUS
JIMMY IDEIT OMONYA.....ACCUSED******

RULING

1. The accused person herein was convicted on 19th December 2025, of the murder of Desmond Omoit Papa, on 15th August 2024, upon finding him in *flagrante delicto* with his wife. He is now a convict. I am called upon to sentence him for that offence. I will consider the penalties available in law for that offence, the circumstances of the commission of the offence, the feelings of the family of the victim and the antecedents of the convict.
2. The penalty, prescribed by the law, for murder, is mandatory death. That is what is in the Kenyan statutes. However, *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) made mandatory death, as the punishment for murder, unconstitutional. That meant that for murder the penalties available would include imprisonment, which is what ordinarily obtains for manslaughter.
3. As stated above, the penalty for murder, according to section 204 of the Penal Code, Cap 63, Laws of Kenya, is death; while that for manslaughter is a maximum of life imprisonment, by virtue of section 205 of the Penal Code. *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), has, no

doubt, thrown everything into a spin. The Attorney-General has not taken steps to straighten out the matter, by amending the Penal Code, to align it to the emerging jurisprudence. There is no clarity, therefore, when it comes to assessing the appropriate sentence to impose for both manslaughter and murder. It is an open field, and, in terms of sentence, it would now appear that there is no difference between murder and manslaughter. The line has been blurred.

4. I called for a pre-sentence report. The probation office has compiled one, and filed it, dated 9th February 2026, on even date. It is generally favourable. The convict is remorseful, according to that report. He explained that he was enraged, beyond control, upon finding his wife and the deceased in the sexual act, within the perimeter of the matrimonial home.
5. The evidence, that was placed before the court, was that the accused stumbled upon his wife and the deceased in the sexual act, in his farm, within the matrimonial compound. He was, apparently, provoked immensely, and fought with the deceased, inflicting upon him fatal injuries. It would appear that he acted under the strain of provocation. He did not flee from the law, instead, he rushed to the police, and filed a report on what had happened. He effectively surrendered himself to the police. The act and fact of surrender points to the sort of person the accused person is.
6. The local administration indicates that he was aware of his wife's sexual affairs with other men, and had reported them to the authorities, who cautioned some of the men. The accused, in that respect, would appear to have had adopted an approach that was civil, legal and reconciliatory. The deceased, herein, created the environment, within which he died, by trespassing into the home of another, and trespassing on another man's

wife, by having sex with her, within the man's compound. It would appear that the deceased was reckless, and the accused acted under provocation.

7. I have noted the circumstances of the commission of the offence, the statements made by the Advocate for the convict in mitigation, and the pre-sentence report. I have also noted the antecedents of the convict. I have taken all these into account, balancing them against the fact that a human being lost his life. In the circumstances, I shall give the convict a custodial sentence, being imprisonment, to be served for 3 years. There is a right of appeal, to the Court of Appeal, within 14 days. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA,
THIS 19TH DAY OF FEBRUARY 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Onanda, instructed by the Director of Public Prosecutions,
for the Republic.**

Ms. Waswani, Advocate for the accused person.