

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CRIMINAL CASE NO. E004 OF 2024**

**REPUBLIC.....**DIRECTOR OF PUBLIC PROSECUTIONS****  
**VERSUS**  
**PHILIP ODUOR SANYA.....**ACCUSED****

**RULING**

1. The accused persons herein were convicted, on 2<sup>nd</sup> February 2025, of the murder of Harriet Mary Akinyi, on 13<sup>th</sup> June 2024. 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, according to section 204 of the Penal Code, Cap 63, Laws of Kenya. 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 should be those others provided in law, including imprisonment, which is what ordinarily obtains for manslaughter.
3. As stated above, the penalty for murder, according to section 204 of the Penal Code, 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 thrown everything into a spin, by erasing the mandatory death sentence. Yet, the Attorney-General has not taken steps to have the Penal Code amended, to align it to the emerging jurisprudence. It would

now appear that there is no difference between murder and manslaughter, so far as sentence is concerned.

4. I called for a pre-sentence report. The probation office has compiled and filed one, dated 19<sup>th</sup> February 2026. The report is generally favourable. The convict is reflected as being remorseful, although denying complicity in the killing. He insists that he is innocent, and sticks to the defence narrative that he gave in court.
5. I have noted the circumstances of the commission of the offence, the statement made by the Advocate for the convict in mitigation, and the pre-sentence report. I have also noted the antecedents of the convict, and the sentiments of the family of the victim, and the community. I have taken all these into account, balancing them against the fact that a human being lost his life, in a most senseless way. I note that this was a case of mob justice, in which the convict was identified as one of the participants. In the circumstances, I shall give him a custodial sentence, being imprisonment, to be served for 10 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 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Ms. Wasswani Laki, instructed by Laki WI & Co., Advocates  
for the accused person.**

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

