



**Republic v Idojo (Criminal Case E008 of 2024)  
[2024] KEHC 4114 (KLR) (26 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 4114 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E008 OF 2024**

**DK KEMEL, J  
APRIL 26, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RUTH AUMA IDOJO ..... ACCUSED**

**SENTENCE**

1. Ruth Auma Idojo had initially been charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code with the particulars being that on the 17<sup>th</sup> day of January, 2024 at Ranje Village , East Bukusu Location, Bungoma South Sub County Within Bungoma County, she murdered Joseph Mulongo Khisa.
2. The charge against the accused herein was later reduced to one of manslaughter following a plea bargain agreement dated 1.3.2024. The court duly accepted the said plea agreement pursuant to the provisions of section 137H of the Criminal Procedure Code and that it satisfied itself on the factual basis of the plea agreement and that the accused was competent, of sound mind and had acted voluntarily in accordance with section 137G of the *Criminal Procedure Code*.
3. The new charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* was subsequently preferred against the accused herein. The particulars are that on the 17<sup>th</sup> day January, 2024 at Ranje Village, East Bukusu Location, Bungoma South Sub-County within Bungoma County, she unlawfully caused the death of Joseph Mulongo Khisa.
4. The facts in support of the charge as disclosed in the plea agreement dated 1.3.2024 are that the accused and deceased had lived as wife and husband respectively and that on the 18.1.2024 their neighbour one Florence Wakoli Otieno heard villagers claiming that “ It is like she has killed him and ran away” and that she went to the scene and found other members of public who were in shock. She entered the house and saw the deceased lying down in a pool of blood and that the accused was nowhere to be



seen. She added that the previous day the deceased had insulted the accused and that the two fought whereby the deceased picked up a kitchen knife and tried to stab the accused who managed to wrench it from him and stabbed him and that the deceased fell down and bled profusely. The accused left the scene and collected some sofa sets for sale. Apparently, the cause of the fight had been due to the accused seeking to sell the said seats. The police were alerted and that the scene was processed. The accused and one of the persons who had purchased the sofa sets were arrested. The other suspect was later released and the accused charged with the offence of murder. At the time, the accused was nursing some wounds sustained during a caesarian delivery which were worsened during the fight. An autopsy was conducted on the body of the deceased by Dr Kosgey who formed the opinion that the cause of death was penetrating cardiac injury from a stab wound. The post mortem report was produced as exhibit one.

5. The accused admitted the charge and further knowingly, voluntarily and truthfully admitted the facts read out herein. She was duly convicted on her own unequivocal plea of guilty.
6. During the sentence hearing, Mr. Okaka for the accused submitted that the accused is a first offender and remorseful for the offence and further that she regrets the incident. It was also submitted that the accused is a victim of domestic violence and that the accused is currently a mother of a three-year child. Reliance was placed in the case of *R v Truphena Ndonga Aswani* [2020] eKLR.
7. Miss Kibet for the prosecution submitted that the court do consider the fact that a life was lost yet there were other ways of resolving the matter instead of killing. It was the view of counsel that as much as she sympathized with the accused being a victim of domestic violence, she should not get away with the offence.
8. The court called for a pre-sentence report. The same is dated 2.4.2024. It indicates that on the material date the deceased arrived while drunk and that an argument arose between the two over the sale of some sofa set seats to enable the accused to use the proceeds to visit her ailing mother and that the deceased slapped the accused severally whereupon the accused picked a kitchen knife and stabbed him severally in the chest and that the accused left him bleeding profusely and until the following day when the lifeless body was discovered by villagers. At that time the accused was at Malaba where she had sought refuge as she feared for her life regarding what she had done. The report also revealed that the accused later arranged and picked the sofa sets and offered them for sale to another person. The local administration is ambivalent on the issue of whether or not the accused can be given a non-custodial sentence since she hails from Busia County while the incident took place in Bungoma County while on the other hand they feel that the accused's actions after the incident portrayed her as a cold-hearted person who had no intention to seek for help in order to save the life of her husband and that there is real danger to her safety should she be released on a non-custodial sentence as there is a possibility of being attacked by the deceased's peers.
9. I have given due consideration to the submissions of learned counsels as well as the sentiments of the County Probation Officer Bungoma. Under Section 205 of the *Penal Code*, manslaughter is punishable by a maximum sentence of life in prison. However, this represents the maximum sentence which is usually reserved for the worst of such cases. This does not appear to fall in the category of the most heinous examples of manslaughter as regards the circumstances of the accused herein. The circumstances of the offence appear to me to be tragic and unintended since the accused was at the time enraged by her husband's refusal to agree to have the sofa sets sold so as to enable her to visit her ailing mother and further by the act of the deceased slapping her severally. The accused in a fit of rage picked up a kitchen knife and stabbed the deceased on the chest and then left him bleeding profusely. The accused later picked the sofa sets and sought to sell to another person and thereafter fled to Malaba from where she was later apprehended and charged. The action of the accused in abandoning her



husband to bleed to death without seeking or even alerting her neighbours must be frowned upon. It seems the accused really wanted to get rid of her husband who had become a pain in the neck. The conduct of the accused in proceeding to pick their household sofa set seats for sale while her husband lay down and bleeding profusely was callous in the extreme. However, it transpired during the proceedings herein (initial plea taking) that the accused had just had a caesarian delivery and was still healing from the stitches which were worsened by the fight with the deceased herein. At the time of taking plea herein, the accused was still nursing those injuries and that she held onto her stomach which appeared distended. It is also noted that the infant is reported to have died soon after delivery. It is also noted that the accused had another child from another relationship and that the only child sired by the deceased is the one who died after the delivery. It is highly likely that the deceased was upset that he had lost his progeny but which could not be attributed to the accused. It is also noted that women who have just delivered suffer from a syndrome called post-partum and which causes them to become moody and hostile even to their partners. The circumstances leading to the incident should be seen in that regard. It is noted that the accused is a first offender and that going by the pre-sentence report and the fact that the accused has opted to plead to a lesser charge of manslaughter thereby saving judicial time, i am inclined to rule out life imprisonment for the accused.

10. Case law could be the starting point in determining a custodial sentence for manslaughter since the [\*Judiciary Sentencing Guidelines\*](#) are silent on the path to take in manslaughter instances. Currently, the said guidelines are being reworked with a view to having them anchored in law. In the case of VMK – v R (E2015) EKLK ten years imprisonment was given for manslaughter. When a dangerous weapon is used in the commission of the crime, courts are more likely to sentence the offender to life in prison. However, the circumstances of each case must be taken into consideration. For instance, in the case of [\*Republic - v- Daniel Okello Rapuch\*](#) (2017) EKLK a sentence of twelve months imprisonment was meted out on a man who killed another on allegation of being involved in an illicit love affair with his girlfriend. The facts in the present case are that the accused stabbed the deceased with a kitchen knife and left him bleeding profusely and that she later picked some sofa set seats and disposed them off and fled to Malaba where she hid before being apprehended. The action by the accused appears to have been callous in the extreme as she did not bother to even alert neighbours to attend to her husband whom she left bleeding profusely. The accused appears to have used excessive force even after being slapped by the deceased and thus the use of a knife in retaliation was excessive and not commensurate with the force or threat posed by the deceased. However, and as noted above that the accused had just delivered a baby who died afterwards, the effects of post-partum syndrome cannot be ruled out. Under normal circumstances, the action by the accused was unwarranted but for the above reasons. Had that not been the case, the deceased could probably be alive today. The social enquiry report has pointed out that the ground is still hostile and that the deceased’s peers are likely to revenge against her. Even though that could be the case, the report has indicated that her parents’ home in Busia is safe for her and that her community is willing to receive her. The accused’s matrimonial home is not conducive. The accused’s only child aged three years is being taken care of by her mother in law. Looking at the circumstances in totality, i am persuaded that the accused merits a non-custodial sentence. This is one case of gender-based violence in that the accused who had lost her baby and had not healed from the caesarian delivery was assaulted by the deceased for confronting him over the sale of sofa set seats which compelled the accused to attack him leading to his death. It is unfortunate that the altercation led to the tragic death of the deceased.
11. The accused has sought for leniency regarding the incident. The Court of Appeal in [\*Charo Ngumbao Gugudu - v- Republic\*](#) (2011) EKLK 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 - v- Republic* (1990) eKLR.”.

12. From the postmortem report produced as exhibit 1, the injuries inflicted on the deceased was a penetrating injury through the sternum to the heart (left ventricle) as well as massive hemopericardium. The opinion of the pathologist is that the cause of death was penetrating cardiac injury from a stab wound. The injuries inflicted by the knife were severe as it transpired that the deceased died after severe bleeding throughout the night. The deceased did not deserve to die. Had the accused not resorted to using a knife in retaliation, then the incident could have been avoided and that the deceased would have been alive today. The accused thus took the law into her hands. However, the fact that she killed her own husband will for ever haunt her conscience even as she begins to serve the non-custodial sentence.
13. The accused has been in custody since the time of her arrest to date. Learned counsel for the prosecution has urged the court for a custodial rehabilitation for the accused. However, the circumstance of the offence together with those of the accused justify an order for a non-custodial sentence. The fact that the accused had just come from hospital upon undergoing a caesarian delivery in which she lost her baby, meant that she was still undergoing post-partum syndrome. The social enquiry report has pointed out that the accused’s parents’ home is ready to receive her while the circumstances at her marital home are still hostile. It is possible for the accused to serve her non-custodial sentence at her parents’ home area as she takes care of her only child.
14. In view of the foregoing observations, order the accused herein Ruth Auma Idojo to serve under probation for a period of three years.

**DATED AND DELIVERED AT BUNGOMA THIS 26<sup>TH</sup> DAY OF  
APRIL, 2024.**

**D KEMEI**

**JUDGE**

In the Presence of:-

Ruth Auma Idojo Accused

Okaka for Accused

Minishi for Prosecution

Kizito Court Assistant

