

Case ID: [2026] KEHC 164 (KLR) Copy

Title: Republic v Wamaitha [2026] KEHC 164 (KLR) Copy

Court: High Court

Judges: SM Mohochi

Date: 19 January 2026

Parties: Republic v Wamaitha [2026] KEHC 164 (KLR) Copy

---- JUDGMENT TEXT ----

REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT NAKURU

CRIMINAL CASE NO. E028 OF 2024

REPUBLIC.....PROSECUTOR

VERSUS

SUSAN WANJIRU WAMAITHA.....ACCUSED

SENTENCE

Susan Wanjiru Wamaitha, the accused arraigned before Court on the 29th August 2024, and charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that; the Accused on the 15th August 2024 at Jewatho Estate within Njoro Township in Njoro Sub-County of Nakuru County Murdered Kevin Kieti Mwendo.

On the 1st October 2025, this Court found guilty her and convicted the accused on a lesser charge of manslaughter reserving this sentence to await, pre-sentencing report by the Probation Department and the victim impact statement as well as mitigation by the accused.

Analysis and determination.

It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; this Court has considered the full circumstances of the offence which is contained in the Facts;

"That, on the 14th August 2024, the accused herein was visited by her boyfriend, herein after referred to as the deceased. Although the deceased worked in Narok, they had rented a place at Jewatho estate, where they lived together as a boyfriend and girlfriend for two months. On that night, they had a fight whereby the accused locked out the deceased. This infuriated the deceased and he broke the window glasses. He hurt his hands. The fight was witnessed by the neighbours and the landlady. The accused then called a friend to the deceased and requested him to call the deceased and calm him down. The friend called the deceased and managed to calm him down.

The friend talked to the deceased. He calmed down and the accused opened the door for him. The deceased slept on the bed while the accused slept on the couch with her daughter.

On the 15th day of August, the deceased woke up at 0600hrs and went to a playing field near his house. He was still drunk. He then went back to the house at around 1200hrs. his landlady met him and reminded him to clear his rent arrears. The landlady also reminded the deceased to repair the window glasses he had broken the previous day.

At around 1330hrs, the accused and the deceased had a fight. The deceased threatened to kill the accused together with her child and then kill himself. Accused took a rungu and threatened to hit the child. The deceased then took a knife. The accused called neighbours and informed them that the deceased had stabbed himself. The neighbours, rushed out to assist the deceased by giving him first aid. They placed a cushion over his chest where he had a stab wound. Unfortunately, the deceased passed on at the scene. Police officers came, processed the scene and escorted the body to Egerton funeral home.

A post mortem performed on the body of the deceased concluded that he died as a result shock due to a stab wound to the chest penetrating the heart.

Upon her arrest, the accused person informed investigators that the deceased had stabbed himself.

The accused was subjected to mental assessment and was found fit to stand trial and she was charged with the offence of murder and which is substituted with that of manslaughter

The following exhibits are produced in support of the charge;

- a) Post Mortem Form
- b) Mental Status Assessment Report
- c) Scene of crime of photos.

Mercy Chepkurui Koskey, expresses regret and remorse for her action, saying that she attributes her offence to anger issues out of provocation from the deceased after fighting over a customer of the trade. She however regrets her actions and takes full responsibility of them.

The Sentencing Policy Guidelines (2023) informs sentencing in Kenya to achieve Proportionality, Equality, Uniformity, Parity, Consistency, Impartiality, Accountability/Transparency and Inclusiveness.

Sentencing is a discretion of the Trial Court. In *Bernard Kimani Gacheru -Vs- Republic (2002) eKLR*, the Court of Appeal stated that:-

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial Court. Similarly, sentence must depend on the facts of each case. On appeal the appellate Court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor or took into account some wrong material, or acted on a wrong principle. Even if, the appellate Court feels that the sentence is heavy and that the appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial Court on sentence unless, anyone of the matters already stated is shown to exist.

This Court is alive to the prime objectives of the criminal law, which is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done and that there is no straightjacket formula for sentencing an accused on proof of crime.

The principle of proportionality is grounded within the concept of just deserts and is embraced by common law. In *Hoare v The Queen (1989) 167 CLR 348*, it was stated that;

“a basic principle in sentencing law is that a sentence of imprisonment imposed by the Court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its objective circumstances”.

What sentence would meet the ends of justice? depends on the peculiar facts and circumstances of each case and the Court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances close in mind. (See Charles Ndirangu Kibue v Republic [2016] eKLR). Further, the Court ought to bear in mind the obligation imposed on it by the Judiciary Sentencing Policy Guidelines to consider the aggravating and mitigating circumstances and their effects on the sentence in determining the most suitable sentence.

The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;

'Any person who commits the felony of manslaughter is liable to imprisonment for life'

The section provides for the maximum sentence, that is life imprisonment and this Court has taken into consideration the aggravating circumstances in that, the convict used a deadly weapon namely knife in committing the offence; the facts reveal that the killing was not premeditated; the accused in a moment of uncontrolled anger having lost out in a scuffle with the deceased went to the kitchen, armed herself with a knife and returned to fatally stab the deceased twice to death.

The mitigating factors taken into consideration by this Court are that the accused are the personal circumstances of the accused that she has also expressed her remorse and is deemed to be a first offender; she has one child.

The accused is 23 years with a two-year-old child and she readily takes responsibility of her actions and pleads for leniency before Court. Reconciliation has not been achieved as the two families are yet to meet. The offense appears to be an isolated incident. She demonstrates a strong potential for rehabilitation. Her family's support and forgiveness play a significant role in her rehabilitation prospects.

The Court is of the view that the fact that she elected to responds with two stab wound with a kitchen knife on the deceased manifest the malice aforethought and guilt intend to harm the deceased, the argument over WIFI ought not to have led to loss of life and a custodial and non-custodial sentence shall offer the convict an opportunity to attorn, undertake reforms as well as take care of her child and that, the convict should be given a chance to serve custodial and a non-custodial sentence. I noted that the convict indicated to the Probation Officer that she would wish to be forgiven.

In the circumstances, I will impose upon the convict a sentence of eight (8) years comprising of Imprisonment of Five (5) years and probation term of three (3) years from the date of completion of the imprisonment sentence.

The Period of Imprisonment shall run from 16th August 2024 and that she shall be eligible to benefit from the Prison remission program.

During the probation period, she shall be under the Supervision of a Probation Officer Nakuru County. She is cautioned to adhere to the following terms:

Susan Wanjiru Wamaitha,, should observe the following while serving the Probation sentence;

She is warned that a Probation sentence is not an acquittal, or discharge, but a legitimate punishment and therefore, she should be careful to diligently serve the sentence as required by the Court and probation officer.

She will obey the Probation Officer supervising her and adhere to all the conditions or terms set as part of that supervision.

She should be of good behavior and not commit any penal offence during the pendency of her

sentence.

Susan Wanjiru Wamaitha, is warned that failure to abide by ANY of the terms under i) above will result in her arrest and committal to an imprisonment term.

It is So Ordered.

Signed, Delivered Virtually on Teams platform

On this 19th January 2026

Mohochi S.M

Judge

Quorum

Schola CA

Mr. J. Oanga Advocate for the Accused

Ms. Mwaura Snr. Prosecution Counsel