



**Republic v Odour (Criminal Case E045 of 2023)  
[2024] KEHC 9625 (KLR) (Crim) (30 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9625 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE E045 OF 2023**

**LN MUTENDE, J**

**JULY 30, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ALICE AKINYI ODOUR ..... ACCUSED**

**SENTENCE**

1. Alice Akinyi Odour, the accused, was indicted for the offence of murder contrary to Section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that on 24/5/2023 at Mathare 4B AREA Starehe sub county within Nairobi county, she murdered Alfred Odhiambo Ongonga alias Otisi.
2. She denied the information at the outset, but, subsequently entered into a plea bargain arrangement with the State hence the charge was reduced to manslaughter.
3. Facts of the case were that the accused who had divorced from a previous marriage and the deceased lived as man and wife and were blessed with two children. It was an abusive relationship. The deceased used to beat her up and hurl insults at her after drinking alcohol. On 24/5/2023 at 5:00am, the accused woke up and prepared breakfast for her children and the deceased. The children went to school while the accused and deceased went to their work place at Parklands forest road.
4. She worked half day and returned home at 2:00 pm, she did house chores and the children returned from school at 6:00pm. The deceased came at 1845 hrs and changed clothes then left at 1900hrs without telling them where he was going.
5. Alex her first born son from the previous marriage aged 21 years passed by to greet them. He went to the cyber café and returned to his parents' house. He asked for supper, but the accused told him that



the deceased did not leave money. Alex bought Kales for his mother and gave her Ksh. 100 for the next day. The accused prepared supper and ate with the children then left some for the deceased.

6. The accused had another house at Mathare where Alex stayed. Alex left for the place but returned and told her that there was confrontation with robbers and the place had been vandalized. They went to take his personal items which had been stolen, also he needed a place to stay and keep the ones he found. Accused requested Alex to accompany her to Murodi area to look for another house, they found a landlord who was reluctant to take them hence they looked for another place at Mathare 4 B.
7. They walked back home and found the deceased had locked the door from inside so the accused told her son to go back to where they had been. The accused daughter opened the door, Alex was outside. The accused found the deceased at the sitting room eating, she sat next to him and explained where she was from, an argument ensued and the children began to scream and Alex got into the house, the accused who appeared drunk turned to Alex and remarked thus:

“... venye unatoshana hivi bado unatembea na mama yako usiku? Chukua mama yako umuoe, mama yako amezeeka kuma yake imemea kuma nyeupe, chukua umuoe.”
8. The deceased continued to insult the accused stating that she had a sexual affair with her son Alex, and pushed them outside the house. The 2 children continued to scream after seeing these events.
9. Accused picked a knife from the house followed the deceased, she stabbed him on the head as the deceased hurled insults at her. The deceased fell at the door and accused cried calling neighbors seeking assistance to remove the knife embedded in the deceased head.
10. One of the neighbors responded, the accused was taken to Mathare Police Station, a case of assault was reported and the accused was detained. The neighbors took the deceased to the dispensary and were advised to go to hospital. The knife was removed from the head at Kenyatta National Hospital and he was transferred to ICU where he died on 30/5/2023 while recuperating. The postmortem was done on 8/6/23 and it was concluded that the cause of death was traumatic brain injury due to a stab wound on the head.
11. In mitigation, the accused prays for leniency and that the court considers a non custodial sentence and the period spent remand custody. That she is a victim of domestic violence.
12. Social inquiries were conducted and the presentence report filed in the matter. The victim impact statement was that the deceased was 49 years old, he had reached class 8 and was survived by his sister who described him as the economic pillar and sole provider.
13. The deceased sister was of the view that the accused should be incarcerated and this would ease the pain of the brutal murder, that it was too soon and barely a year since they had buried their kin. Further, that the accused had also poisoned her brother. That the accused is temperamental and irascible and they feel threatened if she is released.
14. The Community views were from the residents of Mathare 4 B, they indicated that the accused is temperamental, did not relate well with her family and neighbours. She had a troubled marriage but this was due to her acrimony. The local administration from her village said that she was a calm person.
15. The accused family stated that she had good character and that the challenges may have driven her to commit the offence. They prayed for a non-custodial sentence so that she can take care of her children who have been taken up by different relatives after she was arrested. The accused mother stated that although her daughter committed an offence she prays for mercy and that she be given another opportunity to make amends and resume her responsibility to her children.



16. On being interviewed, the accused prays for leniency stating that her children were eye witnesses to the tragedy. She prays for another opportunity to rebuild her life and that of her family and that she has learnt her lesson.
17. The Probation Officer's professional assessment was that the accused projected a deceptive character and this would be a challenge for full rehabilitation. She did not have strong social support system which is necessary for smooth rehabilitation and reintegration. She was also reluctant to do the interview, her presence would cause harm to the children who were healing . The offender hailed from the same locality as the victim and the community is volatile .Her release would threaten peace of the community.
18. Section 205 of the *Penal Code* provides that :-

Any person who commits the felony of manslaughter is liable to imprisonment for life.
19. The court is seized of discretion of sentencing which must be exercised judiciously and guided by laws regulating sentencing.
20. The Judiciary *Sentencing Policy Guidelines* form the back drop as the court also considers the circumstances of each case and determines the appropriate sentence. Paragraph 23.4 of the Sentencing Guidelines states that :- To determine the most suitable sentence, the court shall take into account the aggravating and mitigating circumstances.
21. The aggravating circumstances in the case are the fact of the accused having inflicted a fatal wound on the deceased who succumbed. The offence happened in the view of the children who were still of tender age at the time. The reason for causing the brutal death is stated to be as a result of being a victim of gender based violence as urged by the accused.
22. From the facts presented, the deceased was not armed during the attack and what seems to have transpired is a verbal altercation after the deceased came home and found the accused was out. He hurled insults and offensive words at the accused.
23. The deceased went his way but the accused retaliated by grabbing a knife from the house following him outside. She stabbed the deceased on the head, the brutal attack is explained in the manner it was executed, impact and fatal injuries . The knife was stuck on the deceased skull and had to be removed at the hospital , it took some time from the time of attack to reaching the hospital . The events also explain the undeserved and painful death.
24. The accused on the other hand claims in mitigation that she was a victim of domestic violence. She prays for non-custodial sentence and relies on the case of *State -vs- Truphena Ndonga Aswani* (2021) eKLR where the accused was sentenced to one day imprisonment after she attacked her husband who was also found to be a violent man and the accused had persevered domestic violence over a long period of time.
25. Other mitigating factors are that the accused is a first offender and that she is a mother whose last child is still of tender age and would deserve maternal care. The children have been taken care of their paternal uncles and also the last child is with the accused sister.
26. In the *Truphena Ndonga case* (Supra), the court discussed domestic and gender based violence against women as a notable vice that had been on the rise. The mitigating factors outweighed aggravating factors in that the accused who killed her husband in the process of defending herself was a butchered, battered, dehumanized and violated woman who had no voice. The court found that she persevered through the domestic violence meted on her by her late husband who the court described



as irresponsible and violent. Further, the deceased had two other wives who had parted ways with him because of the violence meted out on them.

27. In the case of *Republic -vs- Idojo* (Criminal Case E008 of 2024) [2024] KEHC 4114 (KLR) (26 April 2024) the accused killed her husband and was sentenced to 3 years probation after serving one year in remand custody. The facts in that case were that 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.
28. The court settled for a non custodial sentence on ground 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. Further, that the social inquiry 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.
29. The presentence report herein forms the source of information of the accused and her family life, it however did not reveal instances or events that can lead to this conclusion of the actual domestic violence. Although these may have been existing, the court should only act on evidence and tangible information.
30. Further, it was expected that the accused would explain her personal circumstances during mitigation or make attempt to aid of his case for leniency. To the contrary, the probation officer indicated that she was reluctant to be interviewed.
31. The court is also advised that the accused does not have a strong social support although her mother seems to be the right person to help her rehabilitate. What is important is that the accused must be fully rehabilitated before she can be released to the society.
32. Rehabilitation means that the chances of committing a similar or any offence are diminished and that the accused is remorseful, the accused must also be seen to atone for taking away life and all the objectives of sentencing must be balanced.
33. It is apparent a non-custodial sentence is not appropriate in this case. In considering the custodial period, certain principles have also been settled and the court must consider the circumstances as a whole vis a vis the objective to be achieved.
34. Paragraph 3.1 (f) of the *Sentencing Guidelines* also refers to the principle of Proportionality providing that:

The sentence meted out must be proportionate to the offending behaviour. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
35. In *Republic -vs- Lucy Nyokabi Mwaura* (2019) eKLR, the accused killed the deceased by stabbing him, caused the deceased to suffer grievous bodily harm and later passed on while on the way to the hospital. The court noted there was an altercation between the deceased and the offender facts also speak to the existence of an altercation between the offender and the deceased. She was sentenced to 10 years imprisonment.



36. In *R-vs- Jared Onyoni Maina*(2021) eKLR, Ougo J. sentenced the accused to ten (10) years imprisonment. In that case the accused pleaded guilty to manslaughter, he stated during mitigation that he was drunk and that he would stop taking alcohol. He was 39 years old and had four (4) children.
37. Considering the circumstances in which the offence was committed, uprutable words hurled by the deceased, which provoked the accused, she is hereby sentenced to serve six(6) years imprisonment with effect from the date of arraignment, the July 14, 2023.
38. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 30<sup>TH</sup> DAY OF JULY, 2024.**

**L. N. MUTENDE**

**JUDGE**

