



**Republic v Amukasa alias Omusuli (Criminal Case E008 of 2024)
[2024] KEHC 13048 (KLR) (29 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 13048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E008 OF 2024
AC BETT, J
OCTOBER 29, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALLAN OPUKA AMUKASA ALIAS OMUSULI ACCUSED

SENTENCE

1. The Accused Allan Opuka Omukasa alias Omusuli was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The charges were later reduced to manslaughter pursuant to a plea agreement dated 22nd May, 2024.
2. The plea agreement was adopted by the court in accordance with the provisions of Section 137H of the [Criminal Procedure Code](#) and upon the court being satisfied with the factual basis of the plea agreement and that the Accused was of sound mind, competent and had acted voluntarily in entering the plea agreement.
3. The Accused was represented by Ms. Mburu and pleaded guilty to the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The particulars of the charge were that on the night of 25th December 2023 at an unknown time at Emaruku village, Kisa North Location, Khwisero Sub-county within Kakamega County, the Accused murdered Andrew Mutiera.
4. At the hearing, the Accused pleaded guilty and said that he killed the deceased but without premeditation. The Court called for a Pre-sentence Report and after the report was filed, both parties made their submissions before sentencing.
5. In mitigation, Ms. Mburu submitted that the Accused is a first offender, is remorseful and still young being thirty-seven (37) years old. Further, that the deceased was a family member and this will weigh heavily on the Accused's conscience for life. She further submitted that the offence was committed in self-defence and that from the outset, the Accused was willing to enter into a plea agreement.



6. On her part, Ms. Chala for the prosecution submitted that the Accused is a first offender who saved the court's time by entering into a plea agreement. She urged the court to consider that the offence of manslaughter is a felony and the principle of proportionality should apply. She further submitted that the pre-sentence report is not favourable to the Accused as the community is not ready to accept him. She prayed for a custodial sentence.
7. The circumstances that led to the offence are that the Accused and the deceased were brothers. On 25th December 2023, the two brothers did some manual work in company of John Ashioya after which they were paid. Upon receiving payment, they proceeded to a chang'aa den to drink. During the drinking session, the deceased demanded a share of the money due to him from the sale of napier grass as a result of which a quarrel ensued due to the Accused person's reluctance to share the money. The deceased went back home and armed himself with a panga and a sword. He then came back to confront the Accused whom he met on the way. The two brothers fell into a fight during which the Accused seriously injured the deceased with a jembe. The deceased succumbed to the injuries on the spot. A post mortem was later conducted on the body of the deceased which revealed that the cause of death was brain injury.
8. Two Pre-sentence Reports were filed by two different Probation Officers. One is dated 7th August 2024 while the other one is dated 24th September 2024. Both reports are not favourable. The Accused's family are bitter with him. They say that the Accused has caused persistent trouble to the family from his childhood and has refused to reform. The family is categorical that they do not want the Accused back in their lives and have expressed an intention of eliminating him should he be released.
9. The community is equally hostile to the Accused whom they describe as troublesome and violent. They see him as an alcoholic who is into drug abuse and bad company with no meaningful engagements in the society. They threaten to lynch him should they see him around.
10. I have considered the Accused's mitigation and the fact that he saved the Court's time by pleading guilty to manslaughter. The Accused, though provoked, violently attacked his deceased brother with a jembe thereby causing him fatal injuries. The offence of manslaughter attracts a life sentence. However, in the plea agreement entered into by the Accused, the State settled for eleven (11) years imprisonment. The Accused has urged the Court to consider granting him a sentence of eight (8) years.
11. I have weighed the circumstances of the offence with the submissions by both parties. I have also considered the Pre-sentence Reports. The Accused must take responsibility for his unlawful and violent conduct. He also needs to be kept away from the community in order for the community to feel safe. Taking into consideration the age of the Accused and the fact that he is remorseful, the Accused is sentenced to a term of ten (10) years imprisonment, the term to run from the date of his arrest.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29TH DAY OF OCTOBER 2024.

A. C. BETT

JUDGE

In the presence of:

Ms. Wanyonyi holding brief for Ms. Mburu for Accused

Ms. Chala for State

Court Assistant: Polycap

