



REPUBLIC OF KENYA



**Republic v Anyul (Criminal Case E021 of 2022)
[2023] KEHC 1637 (KLR) (28 February 2023) (Sentence)**

Neutral citation: [2023] KEHC 1637 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E021 OF 2022
JN KAMAU, J
FEBRUARY 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOASH ANYUL ALIAS OLAOLA ACCUSED

SENTENCE

1. The Accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) cap 63 (Laws of Kenya). Upon entering a Plea Bargaining Agreement, the court has now reduced the charge to manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) and convicted him accordingly.
2. I have looked at the facts of this case and noted that the Accused person and the deceased were siblings. They were both drug and substance abusers. They had a long history of land dispute amongst themselves and a neighbour. On the material day of February 9, 2022, the Accused person went home and demanded for documents relating to the land from his mother. This incensed the deceased who came to find out why the Accused person was making the demands from their mother.
3. A scuffle ensued between the Accused person and the deceased. The Accused person rushed to his house, got a sharp object which was believed to be a panga and he stabbed the deceased who later succumbed to his injuries while receiving treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH). The Postmortem Report showed that the deceased died of penetrating chest injury due to multiple stab wounds.
4. The deceased died as a result of injuries he sustained emanating from a long standing family feud. On that material night, the Accused person had not planned to kill the deceased. The deceased found himself in the scuffle after he came to the rescue of their mother. That was a lot of rage, evidence of a total lack of control and anger management.



5. I have considered the mitigation by the counsel for the Accused person that he was a first offender, that he was young with a young family of three (3) children, the first being six (6) years of age, the second being two (2) years and the last one being three (3) months having been born while he was in custody, that he deeply regretted his actions which he was remorseful and apologised for and that a few family members had forgiven him.
6. I have also considered the mitigation by the State counsel that a life was lost and secondary victims, some whom were still traumatised by the events were deprived of their loved one which affected them.
7. The court has noted the recommendation of the Pre-Sentencing Report of William O. Otieno Probation Officer, Kisumu that was dated and filed on February 22, 2023 that a non-custodial sentence was not recommended as the Accused person was likely to cause more chaos in his family and in the community if he was released.
8. Taking into account that the Accused person caused the death of the deceased as a result of bitterness and hatred in the family due to a land dispute, that he was remorseful, that he was a first offender and that he had saved this court judicial time by entering into a Plea Bargaining Agreement but bearing in mind that the life of the deceased was lost needlessly as the Accused lost control of his emotions, I am of the considered opinion that a sentence of twelve (12) years would be adequate in line with retributive justice. The proposed term of seven (7) years by the Accused person's counsel was on the lower side noting that the Accused person will also benefit from remission of one third of his sentence.
9. I hereby sentence the Accused person to twelve (12) years imprisonment. The period between September 1, 2022 and February 27, 2023 shall be taken into consideration at the time of computing his imprisonment terms which commences today.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF FEBRUARY 2023

J. KAMAU

JUDGE

