



**Republic v Osiako (Criminal Case 2 of 2023)
[2023] KEHC 24396 (KLR) (31 October 2023) (Sentence)**

Neutral citation: [2023] KEHC 24396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 2 OF 2023
JN KAMAU, J
OCTOBER 31, 2023**

BETWEEN

REPUBLIC STATE

AND

JOAB OMUNYAKU OSIAKO ACCUSED

SENTENCE

1. The Accused person was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya). He entered into a Plea Agreement on 21st September 2023 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The facts of the case were that on 3rd August 2018, Leah Penda Atemi (the deceased) came back home where she was living with the Accused person as a husband and wife. She asked for money for rent from him and a disagreement ensued. She threatened to chase him from home. He went to bed. She took a timber wood which was in the house and started beating him. She hit him twice. He woke up and took the wood from her. After a short struggle, he hit her on the back of the head. She fell down and started bleeding from the nose. He walked out and went to sleep at Ambassador Lodging.
3. On 4th August 2018, he woke up and went to work. Later in the evening, he passed by her place of work but he did not see her. When he reached home, he found her lying where she had fallen. He tried to shake her but realised that she was already dead. He collected his belongings from the house and went to Butamu Bar where he spent the night. On 5th August 2018, he fled to Webuye to his sister where he found his brother-in-law Stephen Nikhisa.
4. Back at home at around 1600hours, the neighbours got worried and went to the Accused person's house. They found the house partially locked. On opening the door, they found the deceased lying dead in a pool of blood. The Area Assistant Chief was notified and he in turn called the Police. The



- Police visited the scene and took the deceased's body to the mortuary. The Post-Mortem was carried out on 13th August 2018. The cause of death was determined to have been severe head injury secondary to blunt force trauma following an assault.
5. On 6th August 2018, the Police received information from Stephen Nikhisa stating that the Accused person committed the murder. He had asked him to surrender but he refused. The Accused person moved to his sister's place at Lugulu but he was arrested in the evening. On 7th August 2018, he was arrested by Luanda DCI. Investigations were carried out and he was charged with the offence.
 6. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to seven (7) years imprisonment. On its part, the State recommended a sentence of ten (10) years imprisonment.
 7. In his mitigation, the Accused person asked this court to rely on the Pre-Sentence Report of Fanny Masinde, Probation Officer, Vihiga County that was dated and filed on 25th October 2023 and sentence him to a non-custodial sentence despite having proposed in the Plea Agreement to be sentenced to seven (7) years imprisonment. He stated that he was a first offender and that several people including his father depended on him. He also urged this court to consider the period he spent in remand while his trial was ongoing.
 8. On its part, the Prosecution indicated that it did not have his previous records. It pointed out that the Pre-Sentence Report by the Probation Officer was merely persuasive and not binding on this court. It requested this court to strike a balance between being lenient and doing justice to the victim as a life was lost in unwarranted circumstances.
 9. It also urged this court to consider that the Accused person was easily provoked and that when he entered into the Plea Agreement, he had himself recommended that he be sentenced to seven (7) years imprisonment. It was therefore emphatic that this court should only mete upon him a custodial sentence. It agreed with his counsel that the period he spent in prison during trial be taken into account.
 10. According to the aforesaid Pre-Sentence Report, the Accused person was aged thirty eight (38) years and was the tenth (10th) born in his family. He expressed shock for having killed his wife. He prayed that this court be lenient on him as he was a first offender and give him a non-custodial sentence. His family, community and the Probation Officer also recommended that he be given a non-custodial sentence as he was a generally good and hardworking man.
 11. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The *Sentencing Policy Guidelines* in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
 12. It was important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.
 13. The sentence also had to one that was hinged on retributive justice for the secondary victims. No one should take the life of another. Justice therefore must not only to be done but it must also be seen to be done.
 14. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.



15. The facts that were given in the Pre-Sentence Report were similar to the facts that the Accused person admitted to when he pleaded guilty to the charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He had never been charged with any offence previously prior to the incident.
16. Although he was said to be rough when provoked, this court noted that he was said to be a good and hardworking man who minded his own business. He only became rough when provoked. The deceased provoked him by hitting him with a piece wood while he was asleep for having given her what she termed as insufficient money for rent. He was a first offender and was remorseful.
17. As has been seen hereinabove, the State recommended a sentence of ten (10) years. However, he proposed that the sentence of seven (7) years that he had proposed in the Plea Agreement be reconsidered in view of the positive Pre-Sentence Report.
18. This court found that if it sentenced him to ten (10) years as the State had proposed, taking into account the remission by the prison and the period he stayed in custody during trial of five (5) years, he would be remaining about one (1) years and six (6) months to complete his sentence.
19. However, considering the facts of the case and his mitigation and balancing the fact that a life was lost and the court was called upon to temper justice with leniency, this court was persuaded to find that a custodial sentence of two (2) years would have been suitable and adequate herein. He was binding his own business sleeping when the deceased hit him with a piece of wood. He reacted after being provoked and did not appear to have wanted to cause her harm as was shown by the fact that he went to check on her at her place of work and at her home.
20. He also saved this court judicial time from hearing this case by entering into a Plea Agreement. The period of five (5) years that he spent in custody while he was awaiting his trial was in the mind of this court sufficient retribution to the victim's family and the community for having cut short the deceased's life.
21. Notably, this court was not bound by any of the proposals by the State, Accused person or Probation Officer. It retained the discretion to determine the nature and extent of the sentence to mete out on him.
22. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to two (2) years imprisonment to run from today. However, as he has been in custody since August 6, 2018 when he was arrested for the offence herein, a period that this court took into account in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) while computing his sentence, he has since completed his sentence.
23. It is therefore hereby directed that the Accused person be and is hereby released from custody forthwith unless he be held for any other lawful cause.
24. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 31ST DAY OF OCTOBER 2023

J. KAMAU
JUDGE

