



REPUBLIC OF KENYA



**Republic v Onyango (Criminal Case E001 of 2022)
[2022] KEHC 3081 (KLR) (25 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 3081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E001 OF 2022**

RE ABURILI, J

APRIL 25, 2022

JUDGMENT AND SENTENCE ON PLEA BARGAIN AGREEMENT

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID OCHIENG ONYANGO ACCUSED

JUDGMENT

1. The accused person herein David Ochieng Onyango was vide Information dated January 10, 2022 signed by the Senior Principal Prosecution Counsel, Mr. Edward M. Kakoi, on behalf of the Director of Public Prosecutions. Particulars of the offence being that on the 25th Day of December, 2021 at Siriwo Location in Gem Sub County within Siaya County, he murdered Millicent Awino.
2. The accused appeared before the recess duty court at Kakamega High Court before W.M. Musyoka J on January 10, 2022 and upon the charge of murder and every element thereof being explained to him in the Kiswahili language which he professed to understand, he denied the offence and a plea of Not Guilty was entered. Counsel for the accused Mr. Ooro then applied for the prosecution to supply him with all the witness statements and documents and for the release of the accused person on bond pending trial. The court ordered for a pre bail assessment report and directed that the prosecution supplies the defence with witness statements within seven days.
3. on 26/1/2022 the matter was placed before me for mention to confirm compliance with the orders of 9/1/2022 and for pre-bail report. On the latter date, the prosecution indicated to court that the key witnesses lived with the accused and that they would be amenable to a plea bargain agreement if an offer is made by the accused person.



4. The accused person then stated to court as follows:

“I regret. It was unintended death. My wife was drunk. She had left me with children, she went drinking and slept out. She returned in the morning. I got angry. I took a stick and hit her.”
5. This court then fixed the matter for mention on 15/2/2022 for the parties to attempt Plea bargaining as the presentence report pointed to possible manslaughter.
6. On 15/2/2022, Counsel for the accused, Mr. Ooro appeared and in the presence of the accused, informed this court that he had spoken to the accused and perused the witness statements and that the accused had not given him express instructions on plea bargaining. He therefore sought for a hearing date and directions on bail. Mr. Kakoi for Director of Public Prosecutions agreed that a hearing date could be fixed but that a window for plea bargaining remained open. Counsel for the prosecution did not oppose the release of the accused person on bail pending trial. This court then fixed the case for hearing on 29/3/2022 and implored the parties to engage in plea bargaining negotiations. I also released the accused person on his own bond of Kshs 5000,000 plus one surety of similar amount or to deposit cash bail of Kshs 100,000 and not to interfere with witnesses once released on bond.
7. On the latter date of 29/3/2022 when the matter came up for hearing, Mr. Ooro Counsel for the accused person informed the court that they had entered into a plea bargaining agreement which the accused had executed. He prayed that the court admits the plea bargaining agreement and the lesser charge of Manslaughter.
8. The accused on being asked by the court on the address by his counsel, he stated as follows in Dholuo as interpreted by Mr. Mboya Court Assistant:

“I have agreed and signed a plea bargaining agreement for Manslaughter.”
9. The prosecution counsel Mr. Kakoi too confirmed to court the position and he applied to substitute the charge of murder with that of manslaughter which application the court allowed after taking the accused through the preliminaries on whether he understood his rights and obligations in the plea bargain agreement that he had signed with the prosecution.
10. Upon this court satisfying itself that the accused understood his rights and that he had signed the plea bargaining agreement voluntarily without any force or coercion, and upon the prosecution laying out the factual basis for plea bargaining, and with no objection from the accused person through his counsel, this court admitted the new charge of manslaughter together with the plea bargaining agreement.
11. The fresh charge of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) was read to the accused and every element thereof explained to him in the dholuo language which he said he understood and who, being asked whether he admits or denies the truth of charge replied in dholuo language as interpreted by Mboya Court Assistant. “It is true. We quarreled at home. I took a stick and hit her with it.”
12. This Court then entered a plea of guilty against the accused person on a charge of manslaughter. The prosecution led by Mr. Kakoi Senior Principal Prosecution Counsel read out the facts leading to the death of the deceased as follows: That the accused David Ochieng Onyango was a husband of the deceased Millicent Awino Ochieng. On the December 24, 2021 in the early hours, the two had an altercation which led to the deceased seek refuge in the house of Margaret Oketch, the sister in law to the



accused. At around 5am on December 25, 2021, the deceased left the house of Margaret and returned to her house. On arrival, the accused started beating her. During the beating, the deceased screamed, attracting her neighbor called Alice Ochieng. The deceased was saying “Baba Ochieng, Nisamehe, sitarudia tena” Alice went where the screams were coming from. She found the accused hitting the deceased with a blunt slasher. She intervened but the accused chased her and threatened to beat her. When the screams were over, Alice Ochieng went back to the deceased’s house. She found the deceased lying outside her house, naked and unconscious. The accused was not present. She took the deceased into the house and with the assistance of neighbors, they applied first aid but the deceased succumbed to the injuries and died at her house.

13. The police officers from Yala Police Station were called to the scene, removed the body of the deceased after processing the scene and took the deceased’s body to Yala Sub County Mortuary. The accused was traced at the scene and he was arrested and escorted to Yala Police Station. The postmortem was done on the deceased’s body by Dr. Mbeki on 6/1/2022 witnessed by Peter Oketch Onyango, Fredrick Odhiambo Adede and Walter Okoth Nyangoli at Yala Sub County Hospital. The cause of death was found to be due to severe brain damage secondary to blunt trauma to the head. Mr. Kakoi produced the postmortem dated 6/1/2022 as PEX 1. The slasher that the accused used to beat the deceased which was recovered. It was shown to the court and produced it as PEX 2. Witness statements were recorded, Accused was mentally assessed and found to be fit to plead as per the mental assessment report filed in court prior to taking of the plea for murder, which had now been reduced to Manslaughter. This court was satisfied that the facts disclosed and offence of manslaughter as charged and plea bargained for.
14. The accused person on being asked whether the facts as read out to him in Dholuo language through Interpretation by Mr. Mboya Court Assistant, were correct or not, he responded in Dholuo:

“I have heard the facts as interpreted to me in Dholuo language. I admit that I beat the deceased and injured her. The facts are correct.”
15. The accused person having admitted the correctness of the facts as read out to the court by the prosecution in English and interpreted to him in Dholuo language, this court convicted him on his own plea of guilty for the offence of manslaughter contrary to section 202 of the [Penal Code](#).
16. The prosecution then indicated to court that they had no previous criminal record on the accused person who could be treated as a first offender.
17. The accused person in Mitigation by his advocate Mr. Ooro Edwin, it was submitted that “the accused is aged 36 years old. He was married to the deceased. They had 6 children aged between 20 and 2 years old. 4 of the children are school going. He is a first offender. He regrets the incident. The accused was found crying at the scene where his wife was found dead. He is very remorseful and pleads for leniency of the court. He pleads for mercy for the sake of his children. He has learnt enough lessons from the incident and the consequences of his anger. We urge the court to consider the sentence to be imposed as indicated in the plea bargain agreement, of not more than 5 years imprisonment.”
18. The accused was also given the opportunity to mitigate in his own words and he stated:

“I did not know that I would kill my wife. It is my first offence. I will not repeat it again.”
19. Upon consideration of the circumstances under which the offence herein was committed, and upon hearing the mitigations by the accused person and his counsel Mr. Edwin Ooro and the fact that the accused person is a first offender, the court ordered that the children of the deceased whose father is Mthe accused, as well as the maternal relatives of the deceased do attend court before sentencing. I also



ordered for a presentencing report and victim impact statements from the deceased's close relatives to be filed by the probation officer.

Sentence

20. This court has considered the mitigations by the accused person and his counsel, the presentence report which shows that he is aged 36 years and readily admits his fault and that he is very remorseful, that he has 4 young children two of whom this court has seen here in court aged about two years and nine years respectively; I have also considered the circumstances under which the offence was committed and the punishment for manslaughter which is up to life imprisonment, upon conviction. There is off course no justification for killing another as there are established means of resolving disputes. The minor son of the accused upon being asked by this court on what this court should do to his father who had admitted unlawfully killing the deceased said “funga yeye kidogo yeye ni mbaya aliua mama yangu.” Thus, the child was imploring this court to jail his father though not harshly, because he killed its mother.
21. I have also considered the parental obligations that the accused owes to his very young children whom I find are needy, and the purposes and principles of sentencing as espoused in the Judiciary Sentencing Policy Guidelines. In the premise, I find a short term custodial sentence appropriate in the circumstances of this case, as well as a non-custodial sentence for the accused to be counselled on anger management by the probation officers, to enable the accused reconcile with and care for his young children who know that he killed their mother yet they need him.
22. I hereby exercise discretion and sentenced the accused person David Ochieng Onyango to serve five (5) years imprisonment. However, of the five years imprisonment, the accused shall be on Probation for three years to be counselled on anger management upon serving two years imprisonment taking into account the period that he has served in remand custody from the date of his arrest on December 25, 2021. Right of Appeal 14 days of today.
23. File closed. Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT SIAYA THIS 25TH DAY OF APRIL, 2022

R. E. ABURILI

JUDGE

