



**State v Odhiambo (Criminal Case E006 of 2022)
[2022] KEHC 12404 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 12404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E006 OF 2022
RE ABURILI, J
MAY 31, 2022**

BETWEEN

STATE PROSECUTOR

AND

LUCAS OKWARO ODHIAMBO ACCUSED

JUDGMENT

1. The accused person herein Lucas Okwaro Odhiambo was initially charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Particulars of the information dated February 15, 2022 and signed by Mr Edward M Kakoi, senior principal prosecution counsel on behalf of the Director of Public Prosecutions are that on January 28, 2022 at Honge Beach, Got Agulu sub location in Usigu Division in Bondo Sub County within Siaya County the accused person murdered David Odipo Ogutu.
2. The accused person took plea on February 23, 2022 and denied the offence and a plea of not guilty was entered. He was represented by Mr Okanda advocate. The court directed the prosecution to supply the defence counsel with all documents and witness statements intended to be relied on at the hearing. The accused was also granted bond of kshs 500,000 with one surety of similar amount. He however did not raise the bond.
3. On March 16, 2022, the hearing commenced and 5 witnesses testified against the accused person who offered to plea bargain for a lesser charge of manslaughter and the court accorded the parties an opportunity to plea bargain.
4. On May 31, 2022 the prosecution, on reaching a plea bargaining agreement with the accused, applied and this court allowed the substitution of the Information for murder with that for manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. Particulars of which are that on



- January 28, 2022 AT Honge Beach, Got Agulu Sub location in Usigu Division in Bondo sub county within Siaya County, the accused person unlawfully killed David Odipo Ogutu.
5. The new Information/charge for manslaughter was read out and every element thereof explained to the accused person in Dholuo language on the substituted Information. The accused pleaded guilty to the lesser charge of manslaughter and this court entered a plea of guilty.
 6. Facts of the case were read out to court and interpreted in the Dholuo language for the accused person who agreed with the prosecution on facts and this court convicted the accused person on his own plea of guilty for the Information of Manslaughter, after the court satisfied itself that the facts disclosed an offence charged in the fresh Information.
 7. The brief facts as read out to this court by the prosecution are that on January 28, 2022 at about 6pm, the deceased David Odipo was taking *Chang'aa* in the house of one Jane Atieno when he was joined by the accused herein and as they enjoyed their illicit drinks, a quarrel ensued between the two. *Chang'aa* for one of the two got spilt. The accused then left the house and was followed by the deceased. Both were reportedly drunk from the illicit brew which they had partaken. While outside the house of Janet Atieno, the accused picked a wooden plank of firewood which was being used to cook meals in the vicinity which he used to strike the deceased once on the head. The deceased fell to the ground and became unconscious. The deceased was then rushed to Got Agulu Hospital where he was pronounced dead on arrival and his body was removed to Bondo sub county Hospital Mortuary. The accused was arrested by a mob of people who escorted him to Usenge police station.
 8. On February 10, 2022, an autopsy was carried out on the body of the deceased by Dr Okong'o and Dr Juma who formed the opinion that the cause of death was severe head injury secondary to assault. The prosecution produced the post mortem report as pex 2.
 9. Upon the arrest of the accused person, statements of witnesses were recorded and the accused was escorted for mental assessment and found to be mentally fit to plead to the charge of murder which was substituted to manslaughter following the plea bargaining agreement which was signed between the prosecution and the accused person and his counsel.
 10. The wooden plank which was recovered at the scene and which the accused used to hit the deceased on the head was also produced as pex 1.
 11. The above facts were read out and interpreted to the accused person in Dholuo language and the accused stated that the facts were correct hence the conviction on his own plea of guilty.
 12. The prosecution then stated that they had no previous criminal record on the accused person and that he could therefore be treated as a first offender
 13. However, the accused informed the court that he had previously been arrested and charged before Bondo Magistrate's Court in 2019 with the offence of possession of *Chang'aa* and was convicted and sentenced to serve thirty days' imprisonment which prison term he served in full.
 14. In mitigation, the accused through his counsel and in his own words submitted that he was deeply remorseful for his actions that led to the death of the deceased following a scuffle and was apologetic to the family of the deceased. He prayed for leniency in sentencing saying they were drinking alcohol and that he denied the deceased alcohol leading to the scuffle. He stated that he was aged 29 years old and unmarried but had one child with his girlfriend.
 15. This court has considered the circumstances under which the offence was committed leading to the death of the deceased David Odipo Ogutu. I have also considered the mitigation by the accused and his counsel on record Mr Okanda. I am alive to the fact that the accused has plea bargained for a lesser



offence and saved the court's time and resources. The accused is not a first offender but the offence for which he was convicted and sentenced as admitted by him is unrelated to this offence. He is remorseful for the offence and regrets the consequences of his unlawful action which was influenced by alcohol intake. However, a life was lost through careless drinking of illicit brew.

16. Taking into account the *Judiciary Policy Sentencing Guidelines* and objects of punishment and the fact that the accused has no dependants hence his habit of drinking using proceeds of his labour from fishing in the lake; and the fact that punishment for manslaughter upon conviction is life imprisonment, I find that the accused deserves custodial sentence. I exercise discretion and sentence the accused person Lucas Okwaro Odhiambo to serve six (6) years imprisonment taking into account the period he spent in remand custody since his arrest on February 15, 2022 as he did not raise bail pending trial as granted by this court.
17. Orders accordingly.
18. This file is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 31ST DAY OF MAY 2022

R E ABURILI

JUDGE

