



REPUBLIC OF KENYA



KENYA LAW
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**State v Otieno (Criminal Case E002 of 2022)
[2022] KEHC 12859 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E002 OF 2022
RE ABURILI, J
JUNE 30, 2022**

BETWEEN

STATE PROSECUTION

AND

EDWIN OUMA OTIENO ACCUSED

JUDGMENT

1. The accused person herein is Edwin Ouma Otieno. He was initially charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). He took plea on the charge of murder on January 24, 2022 after a mental assessment report revealed that he was fit to stand trial. The accused denied the offence and the case was set down for a full trial which commenced on May 18, 2022. After four witnesses had testified, the accused person offered to plea bargain and the state agreed upon which on June 30, 2022, the prosecution and the defence signed a plea bargaining agreement and the charge of murder was withdrawn and substituted with the charge of manslaughter. The court did examine the accused person on the signed plea bargaining agreement and also asked the prosecutor to lay out the factual basis for plea bargaining and only accepted the fresh charge of manslaughter after the court was satisfied that the plea bargain was entered into by the accused voluntarily after receiving legal advise from his counsel and after the court explained to the accused person his rights under article 50(2) of [Constitution](#).
2. This judgment is therefore on a plea bargained lesser charge of manslaughter and the sentence imposed by this court. According to the Information dated June 30, 2022, the accused Edwin Ouma Otieno is charged with the offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). Particulars of the offence are that Edwin Ouma Otieno on the 3rd day of January, 2022 at Asere village, Umala sub location, Central Ugenya location, Ugunja sub county within Siaya county, he unlawfully killed one George Odhiambo. The accused was ably represented by a *probono* counsel, Ms Loice Otieno. He pleaded guilty to the charge of manslaughter as substituted and read out to him.



3. Facts of this case which the accused person unambiguously pleaded guilty to after the prosecution counsel Ms Nambisia read them out to the court in English as interpreted into Dholuo language as understood by the accused person are as follows:
4. That on 3/1/2022, at about 7 am, a body of a male adult was discovered near a foot path at Asere village. A member of the public notified Ms Margaret Anyango, the area Chief who visited the scene with Alfred Juma her assistant with sergeant Paul Okom of Umina police post. They found the deceased George Odhiambo and that while at the scene, they discovered drops of blood which led them to a grass thatched house 100 metres away. They got into the house and found Edwin Ouma Otieno the accused person herein sleeping. They observed that all the beddings which he slept on were covered in fresh blood and the walls of the said house were also covered with blood. The police officers interrogated the accused person and arrested him. The Investigating officer from DCI Ugunja visited the scene, processed the scene, arrested the accused and recorded witness statements.
5. Carolyn Atieno Otieno one of the potential witnesses told the police in her statement that on 2/1/2022, she was at her homestead nearby the scene, at about 4 pm with the deceased George Odhiambo who was assisting her dry and remove maize from outside her home when the accused herein Edwin Ouma Otieno who is her neighbour went to her home and told the deceased to leave the work that he was doing and follow him. Carolyn knew the accused to be a friend of the deceased. The two the deceased and the accused then left together and the following day on 3/1/2022 at around 7 am, Carolyn received information that the deceased had been found dead and thrown into the bush.
6. Following investigations, exhibits were recovered from the house of the accused. These included a wooden bed, which was presented and shown to the court and produced as PEx2; the bloodied mattress was also produced as PEx3; a blanked - green/blue/yellow stripes was produced as PEx4.
7. The deceased's body was escorted to Ambira hospital where a postmortem was carried out on 7/1/2022 and a report produced as PEx1. The cause of death was established to be asphyxiation and traumatic brain injury from sharp object. The blood stains on the exhibits 2, 3 & 4 were taken to Kisumu Government Chemist on 11/2/2022. The blood of the deceased was also send for analysis with the samples from exhibits. The exhibit Memo dated 11/1/2022 was produced as PEx5. The report was still with government chemist as it was not ready.
8. A sketch map of the scene of crime was drawn showing where the body of the deceased was found and the blood trail was found. It is dated 3/1/2022 and signed. It was produced as PEx No 6.
9. According to the prosecution, the accused was identified by Carolyn Atieno Otieno as the one last seen with the deceased on the day the deceased went missing and the area chief too identified him as her resident and owner of the house in which he was found.
10. The investigations also revealed that the deceased was assaulted and died at the house of the accused person from where the accused carried the body of the deceased to where it was recovered on a path. The accused and the deceased were friends and they frequented changaa dens. On the material day, they bought *changa* together, took it and they fought leading to the death of the deceased.
11. The accused was arrested from his house and was later taken for mental assessment at Kakamega county referral hospital where it was established that he was fit to stand trial on 6/1/2022. The report was filed before this court before plea was taken.
12. According to the postmortem report, the cause of the death was asphyxiation secondary to strangulation and traumatic head injury using a sharp object.



13. The accused was charged with the offence of murder. Some four witnesses testified. He plea bargained and the charge of murder was substituted with manslaughter. The body of the deceased was identified by his neighbours for postmortem, one Christine Nafula and Adelaide Juma who also recorded their statements.
14. The accused person admitted the above facts as correct after the same were read out to him in Dholuo language which he said he understood. The court then convicted him on his own plea of guilty. The prosecution counsel submitted that they had no record of previous criminal record on the accused person hence he could be treated as a first offender. His counsel, Ms Otieno mitigated on his behalf and the accused was also given the opportunity to mitigate in his own words.
15. In her mitigation, Ms Otieno submitted that the accused was cognizant of his faults was remorseful. That he was a first offender. He apologizes to the friends and relatives of the deceased. That the accused was drunk but gives no excuse. He has a young family which depends on him entirely. Counsel prayed for leniency in sentencing the accused person.
16. In his own words in dholuo language as interpreted to court, the accused submitted in mitigation and stated that he was grateful to the court for giving him a chance to plea bargain. That this was his first offence. That he did not plan to kill the deceased. That both him and the deceased were drunk. That he is young and married to one wife and two children. He prayed for a lenient sentence to enable him care for his family. That they just fought over alcohol.

Sentence

17. The accused person Edwin Ouma Otieno has been convicted on his own plea of guilty upon plea bargaining and admitting the facts of the charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*, as read out to him by the court in Dholuo language.
18. He readily admits unlawfully killing the deceased George Odhiambo over a fight over alcohol. The two were friends. The accused has saved this court time and expense in conducting a full trial. He is remorseful and prays for leniency of the court. He regrets the offence.
19. In the plea bargain agreement, the prosecution seeks for sentence of prison term not less than 20 years while the accused prays for not more than 5 years imprisonment.
20. I have considered the circumstances under which the offence was committed and the mitigations by the accused. Punishment for manslaughter is up to life imprisonment. However, as the accused has plea bargained for a lesser charge and has shown remorse and regrets the offence, considering his age and responsibilities to third parties which is a young family, I find a moderate prison term appropriate as he was not justified in killing his friend. I hereby exercise discretion and sentence the accused person Edwin Ouma Otieno to serve fifteen (15) years imprisonment for the unlawful killing of the deceased George Odhiambo.
21. The sentence shall be calculated from the date of his arrest on 3/1/2022.
22. Right of appeal 14 days to the Court of Appeal explained.
23. File is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF JUNE, 2022

R.E. ABURILI

JUDGE

