



**State v Omudho (Criminal Case E012 of 2022)
[2022] KEHC 14259 (KLR) (21 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14259 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E012 OF 2022
RE ABURILI, J
OCTOBER 21, 2022**

BETWEEN

STATE PROSECUTOR

AND

EDWIN ONYANGO OMUDHO ACCUSED

JUDGMENT

1. The accused person herein Edwin Onyango Omudho was charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). Particulars of the offence as per the Information dated 30th day of March 2022 are that on the 13th day of March, 2022 at Ouru Village, Koyeyo Sublocation in Central Alego Location, in Siaya Sub County within Siaya County, the accused person murdered one, Stephen Omondi.
2. The accused person took plea on March 30, 2022 and denied committing the offence.
3. The trial commenced with the prosecution calling six (6) witnesses including the doctor who performed an autopsy of the body of the deceased.
4. In the intervening period, the accused person had shown the intention to plea bargain for a lesser charge of manslaughter but no agreement was reached until the six witnesses had testified.
5. Plea bargaining agreement was reached and signed on October 19, 2022 upon which the prosecution substituted the charge of murder for that of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#) and the accused pleaded afresh to the new charge of manslaughter on October 21, 2022.
6. The court accepted the plea-bargaining agreement after interviewing the accused person onto appreciate whether the provisions of section 137 A -M of the [Criminal Procedure Code](#) were complied with and after the prosecution laid the factual basis for plea-bargaining.



7. The accused person, upon the charge being read out to him in the Dholuo language which he stated that he understood, under interpretation by the Court Assistant, he admitted the charge of manslaughter dated October 19, 2022. The court entered a plea of guilty and upon facts of the case being read out to him in dholuo language and exhibits produced, the accused again admitted the facts to be correct in dholuo language and this court convicted the accused person on an unequivocal plea of guilty upon satisfying itself that the facts disclosed the offence charged.

Facts of the case

8. The facts of the case as read to court by the prosecution Counsel Mr. Kubebea and which the accused person admitted to be correct before he was convicted for the lesser charge of manslaughter contrary to section 202 as read with section 2105 of the [Penal Code](#) are that: On the 13th day of March 2022 at around 4 pm, the deceased Stephen Omondi who was armed with a panga which had a black handle tied with a black rubber band which was produced as Pex 2 went to the house of the accused person Edwin Onyango Omudho and attacked the accused, claiming that the accused was involved in a love affair with the deceased's girlfriend. That the deceased confronted the accused and a physical fight ensued with the accused grabbing the panga from the deceased and using the same panga to cut the deceased severally on the head and legs. One, George Oloo who testified as PW5 got information from some women who had passed by the accused person's house and saw what appeared to be a fight, rushed to the house of the accused. He found the deceased crying for help. The accused was holding a panga which had blood stains. George Oloo rushed to Ouru Police Patrol Base and reported the incident. He was accompanied by 2 police officers to the scene where they found the deceased lying in a pool of blood with multiple injuries.
9. The deceased was rushed to Siaya Referral Hospital for treatment and transferred to Jaramogi Oginga Odinga Teaching & Referral Hospital at Kisumu for further treatment where he succumbed on 15/3/2022. The blood stained panga was recovered as an exhibit and taken for forensic analysis. DNA Analysis of the blood stains found on the panga by the Government Chemist at Kisumu was compared with DNA profiles of nail samples from the body of the deceased submitted shows that the DNA profile from the blood found on the panga PEX2 and the nail of the deceased were found to match. The report of the Government Analyst Report was produced as PEX3(a). The exhibit memo that collected and submitted the samples to the Government Chemist was produced as Pex3(b).
10. A postmortem was conducted on the deceased's body and the cause of death was found to be subdural haematoma as a result of a sharp force trauma. Postmortem report dated 29/3/2022 was produced as PEx1 by Dr. Ombok Lucy who testified as PW4. From the examination of the deceased's body, he sustained deep cut wound on the right and left part of the head measuring 6.5cm and 8.5 cm respectively; Several deep cut wounds measuring 6.5. and 8cm on the front head and 3cm and 7cm on the back head. The deceased fractured the skull measuring 8cm by 7cm.
11. Upon further investigations, it was discovered that on several occasions in the past, the deceased had attacked the accused over the alleged love affair with his girlfriend and he had destroyed the accused person's property to wit, a television set and solar panel. The incident was reported at Ndere Police Post *vide* OB No. 4/10/3/2022.
12. The accused person was arrested and escorted to Siaya Police Station. He was later escorted to Siaya County Referral Hospital for mental assessment which was done on 21/3/2022 where he was found mentally fit to stand trial. The report is filed dated 21/3/2022. He was processed, statements of witnesses recorded and he was charged with the offence of Murder which, following plea bargaining



agreement, was reduced to manslaughter. The Mental Assessment Report dated 21/3/2022 was also produced as PEx4.

13. The accused person admitted the above facts as read out to court by Mr. Kubebea Prosecution counsel in English and interpreted by Ms. Sarah Ooro in Dholuo language by saying: “Yes, that is what happened. The facts are true (in Dholuo language).”
14. The court then convicted the accused person on his own plea of guilty after satisfying itself that the plea was unequivocal and that the facts disclosed the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
15. The prosecution lead by Mr. Kubebea stated that they had no records of the accused person’s previous convictions hence he could be treated as a first offender.
16. In mitigation, Mr. Were counsel for the accused person submitted that the accused was a first-time offender. That despite his physical challenge, he is the sole breadwinner to his wife and two minor children aged 10 years and 7 years old respectively. That he is remorseful throughout this trial and that he seeks leniency from the court.
17. In his own words, the accused stated as follows:

“I deeply regret the death of the deceased. I ask for forgiveness from the family of the deceased and from this court. This was not intentional. I had an accident and I suffered a disability. I plead for non-custodial sentence to enable me fend for my family. I am 35 years old. I used to drink until I got a serious accident in 2015.”
18. Upon the Court hearing mitigations from the convict and his counsel, this Court directs that a Presentence Report and Victim Impact Statement be filed for the Court’s consideration. Sentencing shall be on 1/11/2022. Accused to remain in custody until then.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF OCTOBER, 2022

R. E. ABURILI

JUDGE

