



**Republic v Agano (Criminal Case E023 of 2022)  
[2022] KEHC 17006 (KLR) (29 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 17006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E023 OF 2022  
RE ABURILI, J  
DECEMBER 29, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSHUA OWINO AGANO ..... ACCUSED**

**JUDGMENT**

1. The accused person herein Joshua Owino Agano was initially charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. Through plea bargaining agreement signed between the state and the accused person, the charge of murder was substituted with the lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
2. The accused therefore pleaded afresh to the substituted charge which was filed *vide* information dated December 29, 2022. Particulars of the fresh information are that the accused person on the September 8, 2022 at Kanyibok village, Usenge sub location, Bondo sub county within Siaya county, he unlawfully killed one Sarah Adhiambo Owino.
3. Although the accused had pleaded not guilty to the initial charge of murder when he took plea on 310/2022, which was read to him in dholuo, he admitted the charge and particulars of the offence of manslaughter to be true after the court read out to him the charge and all its essential elements and a plea of guilty was entered against him. The court accepted the plea bargain after satisfying itself that the accused voluntarily accepted to plea bargain and with the legal advise and representation by his counsel Mr Leonard Okanda.
4. When the facts of the case were read out to the accused person in Dholuo language which he understood better, he admitted the facts to be true upon which the court convicted him on his own unequivocal plea of guilty.



## Facts Of The Case

5. The facts which were read out to the accused person and which he pleaded guilty to were as read out to court by the prosecution counsel Ms Nambisis as follows: On the night of September 8, 2022 at Kanyibok village Usenge/Bondo in Siaya county, Elijah Otieno Owino the son of the accused and the deceased was at home with his siblings at around 8 pm. He heard screams coming from a few meters to their home. He ran out with Kennedy his brother and on arrival, he found the accused his father, assaulting their mother using a wooden stick. The accused was with Boaz Ochieng and Catherine Achieng who are relatives of the accused.
6. Elijah Otieno, a 13 year old pleaded with the accused to stop assaulting the deceased. The two minors - Elijah and Kennedy carried their mother to their house and left the accused in the company of Catherine and Boaz. Elijah then saw injuries on his mother all over her body. The children locked their mother into the house and went to sleep elsewhere then when they returned the following morning, they found her already dead.
7. The incident was reported to Usenge police station by OB September 8, 2022. The OCS Usenge escalated the matter to Bondo DCI and inspector Silas was minuted to investigate the matter. The scene was visited, investigations carried out and the deceased was found lying on a bed in her house with visible injuries. She was removed to Bondo sub county Hospital Mortuary and a postmortem was carried out. Investigations revealed that there were domestic wrangles between the deceased and the accused. The postmortem dated September 15, 2022 revealed that the cause of death was head injury secondary to multiple blunt trauma. The postmortem report dated September 15, 2022 was produced as Pex 1.
8. The accused was arrested and charged with murder of the deceased which offence was reduced to manslaughter through plea bargain. The accused was mentally examined and found fit to stand trial as per the mental assessment report filed in court.
9. Upon the accused person being asked to state whether the facts as read out were true or not true, he stated as follows in dholuo language: "Facts are true as stated." The accused was then convicted on his own unequivocal plea of guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
10. The prosecution counsel informed the court that they had no previous criminal records on the accused hence he was to be treated as a first offender.
11. In mitigation, Mr Okanda counsel for the accused person submitted that the accused person was extremely remorseful for his action and that he pleaded for leniency. He is a father to 5 children who all depend on him. They are minors. The last born is 9 months. He is their sole breadwinner. That from what Elijah told the police, Boaz and Catherine also assaulted the deceased and that all were drunk. That whereas domestic violence was not condoned, however, the 2 consistently quarreled and fought, according to Elijah. That the accused is in need of rehabilitation even as he seeks to take care of his children. Counsel pleaded with the court to exercise discretion and accord the accused person a non-custodial sentence.
12. In his own words, the accused mitigated and thanked this court for expediting his case. expedition. He apologized to the family of the deceased, admitting his fault. He asked for leniency to enable him to go and care for his young children. He stated that it was alcohol that caused all this and that he had now stopped drinking alcohol and promised to care ca re for his children. He stated that he had an old mother aged 80 years. That he fendes for his family from fishing.



13. addressing the court before sentencing, Ms Nambisia submitted that she had considered that there are very young children dependent on the deceased and the accused before proposing two (2) years imprisonment subject to the discretion of the court.

#### **Sentence**

14. I have considered the circumstances under which the offence was committed, the plea of guilty and the mitigations. I have also perused the prebail assessment report filed on October 27, 2022 by John Oyare Oyieko probation officer, Siaya. The accused is a first offender and a father of 5 young children who depend on him as a fisherman. There is no justification for the unlawful killing of the deceased. However, owing to the touching mitigations and considering the best interest and welfare of the young children left behind by the deceased, all under age between 9 months, and 13 years old, although punishment for manslaughter is up to life imprisonment, I exercise discretion and sentence the accused person Joshua Owino Agano to serve probation for a period of three years to be counseled not to repeat such or any other offence and to undertake his parental responsibility for his very young and vulnerable children whose mother is the victim of this heinous offence courtesy of bad drinking habits and should he breach any of the terms of probation, including neglecting to care for his now orphaned children, he shall be brought to court for resentencing to a prison term and the children shall be placed under state protection.
15. I so order. File closed.

**Dated, Signed and Delivered at Siaya this 29<sup>th</sup> day of December, 2022**

**R.E. ABURILI**

**JUDGE**

