



**State v Odhiambo (Criminal Case E024 of 2022)
[2022] KEHC 16988 (KLR) (28 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E024 OF 2022
RE ABURILI, J
DECEMBER 28, 2022**

BETWEEN

STATE PROSECUTOR

AND

BRIAN OTIENO ODHIAMBO ACCUSED

JUDGMENT

1. The accused person herein is Brian Otieno Odhiambo. He was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The Information for murder was dated October 3, 2022. However, following plea bargaining with the state, the charge of murder was substituted with that of manslaughter contrary to section 202 as read with section 205 of the Penal Code. Particulars of the information dated December 28, 2022 are that on the September 17, 2022 at around 12.00 hours at [particulars withheld] village, in North West Location, Gem Subcounty within Siaya County, jointly with another not before court, the accused person unlawfully killed one AOO.
2. Following the signing and filing of the plea bargaining agreement, the accused person was taken through the plea bargain process by the court upon which the court was satisfied that he had voluntarily offered to plea bargain before accepting the plea bargain and that his right to fair trial as guaranteed under article 50(2) of the Constitution were not violated or threatened to be violated by the plea bargain agreement. The court then read out to the accused person the information for manslaughter and all the elements of the offence in the Dholuo language which he professed to understand and he admitted the charge of manslaughter, upon which a plea of guilty was entered against him.
3. The prosecution led by Ms Nambisia read out to court the facts of the case which facts were interpreted to the accused person in the Dholuo language and which the court was satisfied that they disclosed the offence charged and upon the court asking the accused whether the facts as read out to him were true or not true, the accused person admitted the facts to be true. He was then convicted on his own plea of guilty for the offence of manslaughter as charged.



Facts

4. The facts which the accused person admitted to be true are as follows, as read by Ms Nambisia, prosecution counsel: That on September 17, 2022 at around 12.00 noon at [particulars withheld] village, the accused together another called Bramwel went to the home of the deceased AOO a juvenile aged 12 years old and demanded to know why the deceased had stolen his radio. PW1 Noah Odhiambo who is also the deceased's brother was present and saw the accused holding a rungu as he witnessed the altercation between the deceased and the accused and urged them to resolve the issue and even offered to compensate the accused for the loss. The accused is then said to have struck the deceased who escaped but he followed after him and continued striking him with a rungu.
5. George Ochieng, a neighbour who was a sited 30 metres away saw the accused hitting the deceased and shouted at him and the accused stopped. The deceased was then lifted by Noah, PW1 and George Ochieng to a shed where he succumbed to the injuries. A report was made to Yala Police Station where the OCS chief inspector Wafula informed DCI Gem of the murder report and sergeant Ng'eno of DCI Gem took over the investigations. He visited the scene and found a juvenile boy lying at his mother's compound. He processed the scene, took photographs and removed the body to Yala Sub County Mortuary where postmortem was done in the presence of his family members. The DCI retained the radio as an exhibit which was produced as PEX 1.
6. The postmortem results revealed that the cause of death was multi-organ failure secondary to fractures caused by a blunt object. The postmortem report dated September 30, 2022 was produced as PEX2; the photographs showing the 6 juvenile lying dead as PEX 3(a), (b), (c), (d), (e) & (f). The certificate of photographic evidence dated September 22, 2022 was produced as as PEX 3(g).
7. The accused was arrested by DCI Gem and identified as Brian Otieno Odhiambo and was taken for mental assessment. He was found fit to stand trial for murder. He was charged with the offence of murder which was reduced to manslaughter through plea bargain agreement dated December 28, 2022.
8. The accused person responded as follows in Dholuo language upon the above facts being read out to him: 'The facts are true'.
9. Consequently, this court convicted him for the offence of manslaughter on his own unequivocal plea of guilty.
10. The prosecution intimated to court that they had no past criminal record on the accused convict hence he was treated as a first offender.
11. In mitigation, Mr Were advocate for the accused person submitted that the accused was a young man of 22 years, unmarried and has no children. That he is an orphan. He is remorseful for unlawful killing of his close relative of tender age. He is a first offender. He pleaded for leniency and prayed for a lenient sentence as proposed in the plea bargain agreement.
12. In his own words, the accused mitigated and submitted that he was sorry to the deceased's family. He asked for their forgiveness. he stated that he knew he could have languished in prison but prayed for lenient sentence including non-custodial sentence. He thanked the court for expeditious disposal of his case saying that he did not intend to kill the deceased.
13. The family of the deceased was not present in court during the plea bargaining process but his elder brother Noah Odhiambo had testified as PW1 and the prosecution had assured the court that the deceased's family were made aware of the process of plea bargaining for a lesser charge.



Sentence

14. The accused person herein is Brian Otieno Odhiambo. He is a 22 year old young adult who was charged with the offence of murder contrary to section 203 of the [Penal Code](#) as read with section 204 of the [Penal Code](#) but through plea bargain, the charge was reduced to that of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). The accused has pleaded guilty to the charge hence expediting the trial and saving the court and the prosecution time of hearing all the prosecution witnesses lined up.
15. The accused has also mitigated. He is a first offender and is remorseful. He regrets the offence and apologies to the family of the deceased AOO who was his paternal first cousin, according to the prebail assessment report filed in court on October 27, 2022 by Mr Milton Kasera, probation officer.
16. The accused was an orphan left to fend for himself. He lived with his aged grandmother. He is said to be well behaved and hardworking.
17. I have considered all the mitigations and the circumstances under which the offence herein was committed leading to loss of a very young life. Although it is alleged that the deceased had stolen a radio belonging to the accused, I have looked at the so - called radio but it is not worth killing anyone for. It is a shell of a piece of metal which is not anything that could cost a life.
18. The accused had no audacity of killing the young child using a rungu and hitting him repeatedly. The accused is lucky that he has plea bargained for manslaughter, otherwise this is a case where the charge of murder was well merited.
19. I have looked at the postmortem report and it shows that the deceased was butchered to death. He suffered fatal injuries involving fractures of the spinal column and the spinal cord. He died as a result of multi organ failure secondary to spinal cord dissipation injury secondary to compound fractures of C2, C3, C4, C6 due to blunt object trauma.
20. The dead young boy may not have reached the age of criminal responsibility but his young life was scooped out of him. It is unfortunate that the accused person could kill the deceased child using crude weapons and hammered him on his ribs and fractured his spinal cord and spinal column. The accused does deserve serve deterrent sentence. The young boy did not deserve to be killed.
21. I have considered the plea of guilty and the fact that punishment for manslaughter upon conviction, is up to life imprisonment. However, as the accused has pleaded guilty to a lesser charge and appears remorseful, taking into account his age and the sentencing guidelines and purposes and objects of sentencing, I exercise discretion and sentence him to serve fifteen (15) years imprisonment, taking into account the period spend in prison custody.
22. Right of appeal explained. I so order. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF DECEMBER, 2022

R.E. ABURILI

JUDGE

