



**Republic v Benard (Criminal Case E019 of 2024)
[2025] KEHC 2596 (KLR) (14 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 2596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E019 OF 2024
DK KEMEL, J
MARCH 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

VICTOR OTIENO BENARD ACCUSED

SENTENCE

1. The accused herein Victor Otieno Benard has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. However, following a plea bargain agreement dated 10th February, 2025, the charge of murder was substituted with a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The accused pleaded guilty thereto and was convicted accordingly.
2. The sentencing hearing took place on 3rd of March, 2025. M/s Onono learned counsel for the defence submitted inter alia; that the accused is a first offender with one child; that the accused is remorseful; that he is the sole bread winner for his family; that he seeks for noncustodial sentence.
3. Mr. Soita, learned counsel for the Prosecution, submitted that justice has to be seen be done. That a custodial sentence is necessary so that the accused can be rehabilitated before being released to the society.
4. This court called for a presentence report. The same is dated 28th February, 2025 which indicated inter alia; that the offender is known to be a quiet person in the community; that he is married with one child who is now one year old; that the accused found the deceased who was his brother beating their last born brother with a jembe handle and that he got angry with the deceased whom he had warned in the past to stop beating their last born brother; that his intention was to discipline the deceased; that he did not know that the action would lead to his death; that the community has known him to be



a no nonsense man and that they are ready to receive him back as he is the sole bread winner of the family; that the probation officer recommends that he be placed on probation.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. Under Section 205 of the *Penal Code*, the maximum sentence for manslaughter is life imprisonment. However, following the decision of the Supreme Court in Francis Karioko Muruatetu & 2 Others Vs. R (2017) eKLR, the mandatory nature of sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter.
6. As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu Vs. R (2011) eKLR, held as follows:

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See Ambani Vs. R (1990) eKLR.”

It is noted that the accused was in custody during his trial and thus such period must be considered in line with the dictates of section 333(2) of the *Criminal Procedure Code*. I find the circumstances of the case and the pre-sentence report indicate that the family of the accused are in support of supervised non-custodial sentence. Both the local administration and offender’s family recommend for non-custodial sentence as it will help him reintegrate and settle well in the community. It is noted that the accused has been in custody since the date of arrest and that he is deemed to have learned some lessons and appreciated the circumstances which led to the death of his younger brother. It is unfortunate that the intended disciplinary action by the accused upon the deceased led to the death of the deceased. Had the accused resorted to other channels of redress, the deceased would have been alive today. The pre-sentence report dated 28th February, 2025 has aptly captured the situation of the accused and deceased in that the accused was incensed by the conduct of the deceased in frequently beating their young last-born brother and that on the material date, the accused found the deceased assaulting their younger brother and that he seized a jembe stick that the deceased was using and hit him with it. The deceased unfortunately died from the injuries. According to the pathologist who conducted the autopsy, the deceased died as a result of cardio pulmonary failure following a blunt chest injury. The accused is reported to be remorseful over the incident and that he regrets having killed his own brother. According to him, he had meant to discipline the deceased for having harassed their young brother and that he did not know that the same would lead to his death. His mother has forgiven him as he was the one supporting her. The community is receptive to him being allowed to rejoin them as he is not a flight risk. The accused is also the bread winner for his young family with one wife and a baby girl aged one year. I find a non-custodial sentence is appropriate in the circumstances.

7. In the result, I order the accused herein Victor Otieno Benard to serve a sentence of three (3) years under probation. While serving under probation, the accused is expected to have adhere to the conditions under the Probation Order and that in default the same will be cancelled and that he will be ordered to serve custodial sentence regardless of any period already served under probation.

DATED AND DELIVERED AT SIAYA THIS 14TH DAY OF MARCH, 2025

D. KEMEI

JUDGE

In the presence of:



Victor Otieno Benard.....Accused

Ms. Onono.....for Accused

Mocha.....for Prosecution

Ogendo.....Court Assistant

