



**Republic v Osunga (Criminal Case (Murder) E027 of 2024)
[2025] KEHC 2936 (KLR) (14 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 2936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE (MURDER) E027 OF 2024**

**DK KEMEL, J
MARCH 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID ODHIAMBO OSUNGA ACCUSED

SENTENCE

1. The accused herein David Odhiambo Osunga 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 proceeded on 3rd March, 2025. M/s Onono counsel for the accused submitted inter alia; that the accused is remorseful; that he is a first offender and a sole bread winner for his four children; that the accused prays for leniency and a non-custodial sentence; that judicial time has been saved as he has pleaded guilty to the offence and that he requests the court to exercise discretion in the matter.
3. Counsel for Prosecution M/s Mumu submitted inter alia; that the accused is a first offender though a custodial sentence should be considered as it will enable the accused to be rehabilitated before being allowed back in the community.
4. This court called for a pre-sentence report by the probation department. The same is dated 28th February, 2025. The same indicates inter alia; that the accused comes from a humble upbringing and a first born in a family of six siblings; that the accused studied upto class eight only since he had no school fees to further his education; that the accused was living alone with the deceased and their four children; that following the death of his wife and following his arrest, the children are in custody of



accused's parents leaving his home unoccupied; that his mother and brother have been supportive of the accused and have been visiting him in prison and attending court as scheduled during mention dates; that the accused's family pleads for non-custodial sentence so that he takes care of his children; that their kin is a very hardworking person and that he used to take good care of his family; that they are ready to support him reintegrate back to the community and that they will offer guidance.

The report further indicates that the accused got married to the deceased in the year 2012 and were blessed with four children, the last born being two years old; that the accused is mentally and physically stable; that the accused is a member of Holy Spirit and Healing Gospel Church; that the deceased had bleeding complications as a result of miscarriage and had suffered earlier on but she did not take her condition seriously; that the accused on several occasion requested her to seek for medical intervention but the deceased refused to go to hospital; that since her condition did not improve, the offender was affected and did not want to lose her; that on the day of the incident, the accused had left her money to seek medical attention but which she did not do and upon the accused seeking clarification as to why, she became sarcastic; that the accused became angry and slapped her upon which she fell on a table injuring herself; that the offender and deceased had marital issues as the accused alleged that the deceased was unfaithful; that the infidelity issue had been brought under the attention of assistant chief who had at one time advised the offender to separate from deceased if he felt that he could not put up with her unfaithfulness; that 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.

5. I have given due consideration to the mitigation submissions as well as the pre-sentence report. Under section 205 of the [Penal Code](#), the maximum punishment for manslaughter is life imprisonment. However, this is reserved for the worst form of offenders. The autopsy conducted by Dr Okongo of Siaya County Referral Hospital, the cause of death was due to head injury with femoral fracture with massive low back intramuscular hematoma. The injuries aforesaid confirms that the deceased died a painful death. Had the accused resorted to other forms of redress such as engaging both families over their failed marriage, the deceased would be alive today. The accused used excessive force in a bid to discipline the deceased and which led to her death. The pre-sentence report is favourable for a non-custodial sentence and that both families are willing to receive the accused back in the community so that he can take care of their four children. The accused will be living with guilt for the rest of his life for having killed his wife. From the comprehensive pre-sentence report, the accused merits a non-custodial sentence. It is also noted that the accused has saved the court precious judicial time by pleading guilty to the charge herein.
6. In the result, I order the accused herein David Odhiambo Osunga to serve under probation for a period of three years under probation. The accused is ordered to adhere to the terms of the probation order failing which he shall be ordered to serve custodial sentence regardless of any period already served under probation.

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

D.KEMEI

JUDGE

In the presence of :

David Odhiambo Osuga Accused

M/s Onono for Accused

Mocha for Prosecution

Ogendo Court Assistant

