



**Republic v Rahudhi (Criminal Case E008 of 2024)
[2025] KEHC 3018 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E008 OF 2024**

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

BETWEEN

REPUBLIC PROSECUTION

AND

VICTOR OMONDI RAHUDHI ACCUSED

RULING

1. The accused herein Victor Omondi Rahudhi 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 18th 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 4th March, 2025. Mr Odhiambo, learned counsel for defence submitted inter alia; that the accused is living with disability as he is with one eye and that he has other dependants with disability including his uncle who is totally blind; that the accused lived with his brother who is deaf and dumb and who was wholly depending on him and are now struggling to survive; that the accused engaged in agriculture for his survival and his dependents and used to sell them at Luanda market and that this case was a cumulative provocation; that the deceased came for the parcel of land which the accused and his dependents relied on for survival; that the elders determined the dispute in favour of the accused and that the blue gum trees belonged to the accused; that the deceased claimed that he had paid accused over the blue gum trees but offered no evidence; that the accused was infuriated but he walked away; that the deceased planned to kill the accused in order to take the land which made the accused to be enraged and thus attacked the deceased; that the plan to kill accused is the last straw that broke the camel’s back; that the accused is a first offender and he has been in custody for one year upon his arrest; that the accused is remorseful over the incident and that



he prays for leniency for the interest of justice as his dependants are now depending on charity and that he urges the court to ignore the presentence report in its entirety.

He further submitted that; the probation officer is required by the Judiciary Policy Guidelines to provide accurate information to court and further warns them from presenting false reports; that the report dated 28th February 2025 is factually unreliable; that the earlier report filed by probation department contradicts the pre-sentence report that indicated that the accused suffers from neurotic and disturbing thoughts. That the current pre-sentence report indicates that the accused abuses drugs yet the pre-bail report did not have such a report; that the presentence report indicates that the offence was premeditated and which is an issue beyond the scope of the probation officer.

The counsel further submits that the accused is remorseful and there exists an allegation that the accused had been threatened by the deceased vide OB16/13/2024 yet the accused was arrested two days later; that it was not possible for accused to threaten the deceased's family. The counsel further submitted that the Probation officer has not indicated whether the accused was interviewed and that the identity of the local administration has not been availed. The counsel urges the court to disregard the whole report and give the appropriate orders.

3. Mr. Soita, learned counsel for the Prosecution, submitted that the prosecution has proved its case beyond reasonable doubt and that the accused committed the offence and escaped for over three years; that the society is still hostile; that there is no evidence of marriage such as marriage certificate; that the issue of impairment by accused has not been substantiated by the defence; that the issue of provocation indicates that there is no remorsefulness and that he urged the court to consider the pre-sentence report and prefer sentence as per the law.
4. 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.
5. 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 accused lacks family support for an order of a non-custodial sentence. It is also noted that no reconciliation has been initiated between the family of the accused and that of the deceased and that the community and the local administration have no kind words for the accused following the incident. That the home environment is still hostile and that the villagers razed his house to the ground as they were enraged by the killing of the deceased. The report also revealed that the accused has anger related issues and therefore a custodial sentence is necessary for him. The custodial rehabilitation will help to mould him into a better person before being released back to the society. Again, the circumstances leading to the death of the deceased appear rather tragic. According to the autopsy report dated 20th July 2020 conducted at Yala Sub County hospital, the same



indicated that the deceased sustained multiple and severe cuts all over his body inter alia; deep cut wound on occipital area of the head exposing brain matter, cracked skull, deep cut across the face with both eye balls as well as the nasal breach, the jaw was cut, the jugular vein on the neck was cut, there was total amputation of the right upper hand. The cause of death was indicated as severe hemorrhage secondary to extensive cut wounds. The deceased must have died a very painful death.

The probation report recommends custodial sentence as the accused is not remorseful and that he had the intention of killing the deceased. The accused could have used other modes of redress if aggrieved by the decision of the elders but not to kill the deceased. This court also takes into consideration the fact that the accused has saved judicial time by pleading to the charges.

6. In the result, I order the accused herein Victor Omondi Rahudhi to serve a sentence of fifteen (15) years' imprisonment which shall commence from the date of arrest namely 26th January, 2024.

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

D. KEMEI

JUDGE

In the presence of:

Victor Omondi Rahudhi.....Accused

Odhambo.....for Accused

Ogendo.....for Prosecution

.....Court Assistant

