



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Owuor (Criminal Case E042 of 2023)
[2025] KEHC 4399 (KLR) (8 April 2025) (Sentence)**

Neutral citation: [2025] KEHC 4399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E042 OF 2023**

DK KEMEL, J

APRIL 8, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

RICHARD OTIENO OWUOR ACCUSED

SENTENCE

1. The accused herein Richard Otieno Owuor has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Vide the judgment of this court dated 24/3/2025, the accused was found guilty of a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code* and convicted accordingly.
2. Sentencing hearing took place on 7/4/2025. Mr. Mshindi, learned counsel for the defence submitted inter alia; that the accused is a first offender who prays for leniency; that the accused seeks for a non-custodial sentence so that he can join the community even though the said community is mad with him at the moment; that if the court considers a custodial sentence then the period spent in custody be factored.
3. Mr. Mwangi learned counsel for the prosecution urged the court to consider the contents of the pre-sentence report.
4. This court called for a pre-sentence report. The same is dated 4/4/2025. The report indicates inter alia; that the deceased who served as a bar attendant had disagreed with the accused herein and that the accused in anger left the bar went to his house, came back while armed and attacked the deceased; that the accused is not remorseful and still insists that he did not commit the offence; the family of the deceased is still bitter to the loss of their kin who was the bread winner; that community members are also still bitter with the actions of the accused and that they have vowed to deal with him accordingly



if he is spotted around; the probation officer was of the view that the accused needs time to reflect on his life all over again and therefore a custodial rehabilitation is suitable.

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 (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. However, the court could as well impose the maximum sentence if circumstances warrant it.
6. As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu v 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 v R (1990) eKLR.”

It is noted from the autopsy report prepared by PWS that the cause of death was obstructive/ cardiogenic shock due to penetrating wound on the heart. The said pathologist went on to add that the deceased suffered a severe penetrating stab wound. From the injuries indicated on the autopsy report it is clear that the deceased died a painful death. The accused herein did not give the deceased a chance to survive due to the severe injuries inflicted. The accused should have resorted to other channels of redress. It has also transpired from the pre-sentence report that the accused is violent individual who has had a tumultuous marriage with his two wives one of whom deserted him prior to the incident while the second one left him after the incident. The report has also indicated that community members are still bitter over the incident and have vowed to deal with him if he ever sets foot there. This then calls for a custodial rehabilitation for the accused as the members of the community might lynch him if he shows around. The custodial rehabilitation will help to mould him into a better individual before being released back to the society.

7. It is noted that the accused herein remained in custody throughout the trial. Any period spent in custody will be considered during the sentencing in line with the provisions of Section 333(2) of the Criminal Procedure Code.
8. In the result, I order the accused herein Richard Otieno Owuor to serve a sentence of fifteen (15) years’ imprisonment which shall commence from the date of arrest namely 29/11/2023.

DATED AND DELIVERED AT SIAYA THIS 8TH DAY OF APRIL, 2025

D. KEMEI

JUDGE

In the presence of:

Richard Otieno Owuor.....Accused

Owuor Bush for Mshindi.....for Accused

Kofa.....for Prosecution

Okumu.....Court Assistant

