



**Republic v Okello & another (Criminal Case E31 of 2024)
[2025] KEHC 8374 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E31 OF 2024**

**DK KEMEL, J
JUNE 17, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MACELUS ODHIAMBO OKELLO 1ST ACCUSED

MARCUS OMONDI OKELLO 2ND ACCUSED

RULING

1. The accused persons herein, Macelus Odhiambo Okello and Marcus Omondi Okello had been charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). However, vide a plea agreement dated 10th February, 2025, the charge of murder was reduced to that of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#). The particulars of the offence are that on the 23rd day of June 2024, at around 1900 hours at Akuom Village of Bar Osimbo Sub location, South Alego Location in Siaya Sub County within Siaya County, they unlawfully killed one Maurice Aduol Okello. Both accused duly pleaded guilty thereto and were convicted accordingly.
2. Sentencing hearing took place on 23/5/2025. Mr Ooro E for M/s Onono, learned counsel for defence submitted inter alia; that the accused persons are first offenders and remorseful; that they are saddened by the death of the deceased; that they are young men who are yet to start life; that they seek for leniency; that a non- custodial sentence be imposed.
3. Mr. Soita, learned counsel for the prosecution placed reliance on the record as well as the pre-sentence report. He urged the court to impose a custodial sentence.
4. This court called for pre-sentence reports from the Probation department. The reports are dated 22/5/2025. The same indicates inter alia; that both the offenders are half-brothers to the deceased herein and that the deceased herein was the one taking care of them during their childhood since their



parents died and that the deceased had been instructed by the father to hold land in trust for the offenders and to transfer to them once they came of age; that there had been a longstanding dispute over the said land due to the deceased's failure to allocate the offenders the land due to them as had been directed by their late father; that the deceased had been hostile to the offenders demand that he allocates them the land earmarked for them; that the family of the deceased are apprehensive that the offenders have been harbouring grudges against them and thus their lives are at risk if they are released on non-custodial sentences; that the local administration have no problems with the offenders whom they feel that they acted in self defence and that they recommend non-custodial sentences; that the probation officer recommends custodial sentences for the offenders as they are reported to have been acting with impunity against the deceased's family.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence reports filed by the probation department. Under Section 205 of the [Penal Code](#), the maximum punishment for manslaughter is life imprisonment. However, this is imposed upon the worst form of offenders.
6. From the post mortem report produced by Dr. Okongo Eric who conducted the autopsy on the body of the deceased on 26/6/2024 noted injuries inter alia; cut wound on the nasal bridge, left temporal area; depressed skull fracture on the left frontal temporal region; there was acute subdural hematoma on the left. The said doctor formed the opinion that the cause of death was severe head injury. The autopsy report, Exhibit Memo Form. Analyst report and two pangas were produced as exhibits 1,2 (A&B), and 3 respectively.

The circumstances under which the deceased died are rather tragic. The deceased was jointly assaulted by the two accused persons and that the deceased suffered severe head injuries and died at the scene of crime while the two accused herein also suffered injuries but survived. There seems to have been a serious fight at the scene as both of the combatants were then armed with pangas some of which have been produced as exhibits. It is noted that the source of the conflict was the family land that had been left by their late father. It is unfortunate that the said issue has consumed the life of the deceased and left the accused herein with injuries. Had the accused persons used the right channels for redress, the deceased could have been alive today. The accused could as well have lodged a case at the relevant forum for determination and that the issue of who would get what size of land could have been resolved. The accused persons took the law unto their hands and confronted the deceased while demanding to be given their share of the family land. Hence, had they resorted to the proper channels for redress, the incident could have been avoided. The pre-sentence report has indicated that even though the accused persons have good community acceptance, the family of the deceased are reported to live in fear of the accused persons who are likely to revenge against them if a no-custodial sentence is imposed since the land matter has not been resolved. It is also noted that the death of the deceased arose out of a disagreement between the accused persons and the deceased and that the three had fought using pangas. It seems the two accused persons teamed up and went and confronted the deceased who at the time is claimed to have sat on the grave of their late father. I find that had the accused reported the matter to the local administration, the incident could have been avoided.

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.”



7. It is noted from the pre-sentence report that the probation officer has recommended that the accused persons should not be considered for a non-custodial sentence due to the fact that the family of the deceased live in fears of revenge by the accused persons. The report further indicates that the local administration has no problem with the accused persons whom they believe were defending themselves. However, it has emerged that the two accused persons had teamed up and, while armed with pangas, went and confronted the deceased which led to the violent fight leading to the death of the deceased. It transpired from the earlier testimony presented to this court before the parties entered into a plea bargain agreement that a simmering land dispute was the reason behind the attack. Indeed, land matters are quite emotive in nature and that such disputes over land often degenerate into fights some of which turn out fatal. Again, it transpired that the accused persons came out as persons with a high temper and hence their resolve to team up and confront the deceased over the unresolved land matter. As the issue of the land dispute has not been resolved and the fact that the accused persons have not reconciled with the family of the deceased, I find that there is a high likelihood of revenge by the accused persons once released. It is instructive that the actions of the accused herein in teaming up and confronting the deceased led to the death of the deceased. Even though it is claimed by the accused persons that they were acting in self defence, I find that they are the ones who went and confronted the deceased. A life which is sacrosanct was lost. I find that a custodial rehabilitation is necessary in the circumstances so as to enable them undergo comprehensive rehabilitation before being released back to rejoin their families. The custodial rehabilitation is necessary to enable them take stock of their lives as they undergo the said rehabilitation which will mould them into better individuals before they are released back to the society. The court also takes note of the fact that the accused persons have saved the court precious judicial time and that the same will be taken into consideration when it comes to the sentence to be imposed.
8. It is noted that the accused persons herein have been in custody since the time of their arrest and hence the sentence to be imposed shall commence from the date of arrest namely 23/6/2024 in line with the provisions of section 333(2) of the *Criminal Procedure Code*.
9. In the result, I order each of the accused persons herein Macelus Odhiambo Okello and Marcus Omondi Okello to serve a sentence of ten (10) years' imprisonment which shall commence from the date of arrest namely 23/6/2024.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 17TH DAY OF JUNE 2025.

D.KEMEI

JUDGE

In the presence of:

Marcelus Odhiambo Okello.....1st Accused

Marcus Omondi Okello.....2nd Accused

M/s Onono.....for Accused

M/s Keruobo.....for Prosecution

Okumu.....Court Assistant

