



**Republic v Onono (Criminal Case (MURDER)E050 of 2024)
[2025] KEHC 8286 (KLR) (13 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 8286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE (MURDER)E050 OF 2024**

DK KEMEL, J

JUNE 13, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID OYOO ONONO ACCUSED

SENTENCE

1. The accused herein David Oyoo Onono had been charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). However, pursuant to a plea bargain agreement dated 29/4/2025, the charge of murder was reduced to one of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#). The particulars of the offence are that on the 28th day of February 2024 at Kalanyo village, Bar Sauri Sub Location, Yala Township Location in Central Gem Sub County within Siaya County, he unlawfully killed Joshua Juma Owiti. The accused pleaded guilty to the charge and was thus convicted accordingly.
2. Mr. Ooro E. learned counsel for the defence submitted inter alia; that the accused is a first offender and is remorseful; that he is saddened by the turn of events; that he is a family man with three children some of whom are school going; that the deceased was a close friend of the accused as he had allowed him to burn charcoal on his land; that upon the deceased falling down, the accused escorted him to his house and placed him on his seat to rest; that the accused harbored no ill will against him; that a non-custodial sentence be imposed.
3. M/s Kerubo, learned counsel for prosecution, submitted that the accused is a first offender. That the action of the accused has caused the death of the deceased who was the bread winner of his family and that his children have now been left without a father. That the court should pass a sentence which will serve as a lesson to others.



4. The County Probation Officer filed a pre-sentence report. The same is dated 30/5/2025. It indicates that the deceased who was heavily intoxicated snatched a panga from the accused and hit him with it using the flat side whereupon the accused pushed him away but that he fell on the charcoal. That the accused assisted him to his house nearby and left. That the accused and deceased were great friends and business associates. That the family of the victim are still bitter for the loss of their kin but are open to any reconciliation. That the community is receptive to the accused. That the local administration have no problem with the accused and that they recommend a non-custodial sentence.
5. I have considered the mitigation submissions of both learned counsels. 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 examination by Dr. Chacha Patrick of Yala Sub County Hospital dated 11/3/2024, the cause of death was opined to be brain hypoxia secondary to traumatic rupture of the common carotid artery due to assault.
7. The circumstances leading to the death of the deceased are tragic. The accused has confirmed having pushed the deceased after he had assaulted him and who fell on some charcoal nearby and that he escorted him to his house and placed him on his sofa set and went away only to learn that he had passed on. The conduct of the accused in taking the deceased to his house and placing him onto a seat and walking away without considering the need to rush him for medication was in bad taste and inappropriate. It is also instructive that he fled from the area upon learning of the demise of the deceased. I find the deceased did not deserve to die in the manner that he did. The accused could have engaged the services of the clan elders upon being confronted by the deceased so that the dispute, if any, could be amicably resolved. Had he done that, then the deceased could be alive today.
8. 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 is imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is 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.
9. It is noted from the pre-sentence report that the probation officer has recommended that the accused be placed under probation so as to enable him to take care of his large family. The accused appears to be a person with a high temper going by his actions in retaliating against the drunk deceased and pushing him to the ground and not bothering to call for medical help and then leaving him for dead. The accused’s claim that he has a large family to care for should also be juxtaposed with the situation of the children of the deceased who have been left without a bread winner. I find that the accused requires to serve a custodial sentence where he will undergo rehabilitation before being allowed to serve under probation as recommended by the probation officer. The custodial rehabilitation will help him take stock of his life before being allowed to rejoin the community.
10. It is noted that the accused managed to post bail immediately upon taking plea and hence the application of Section 333 (2) of the Criminal Procedure Act does not apply and thus the sentence shall commence from the date of conviction namely 20/5/2025.
11. In the result, I order the accused herein David Oyoo Onono to serve a custodial sentence of two (2) years’ imprisonment from 20/5/2025 and thereafter he shall serve under probation for a period of three (3) years under the supervision of Siaya Probation Office.



DATED AND DELIVERED AT SIAYA THIS 13TH DAY OF JUNE, 2025.

D. KEMEI

JUDGE

In the presence of

David Oyoo Onono.....Accused

Ooro F for Ooro E.....for Accused

Mocha.....for Prosecution

Okumu.....Court Assistant

