



**Republic v Okumu (Criminal Case E053 of 2024)
[2025] KEHC 9663 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E053 OF 2024**

**DK KEMEL, J
JULY 7, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

VIVIAN AKOTH OKUMU ACCUSED

RULING

1. The accused herein Vivian Akoth Okumu 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 23rd May 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 particulars are that the 7th December 2024 at around 1930 hours at Obare village, Mur Ngiya sub Location within Siaya County unlawfully killed one David Charlton Obare. The accused pleaded guilty to the charge and was convicted accordingly.
2. The sentencing hearing proceeded on 20th June 2025. Mr. Ooro E for accused submitted inter alia; the accused is very remorseful and is a first offender; that the accused regrets the death of her husband which was unintended; that she is a mother of one child; she is also a young person who still has a whole life ahead of her; that she prays for leniency; that she has learnt from her mistakes and will not repeat again; that she prays for a non-custodial sentence.
3. Counsel for Prosecution Mr. Mocha left the matter to the court.
4. This court called for a pre-sentence report by the probation department. The same is dated 5th June 2025. The same indicates that the deceased had married the accused in 2019 and that they have one daughter who is five years old who is currently in the care of the accused brother. That the accused visited the deceased home in Ng'iya after having been away for work in Usenge for one week and found the deceased asleep on the bed and that she asked him for money but which the deceased did not respond. That she approached the deceased on the bed and saw some blood stains and that a



confrontation ensued in which the accused stabbed him involuntarily in self defence. That the accused and the deceased actually had been separated for about a year; that the accused had received a tip of that the deceased had brought in another woman to the house and that she had gone to visit the accused while in an angry mood. That the accused does not show any remorse as she appears relaxed and unbothered saying she acted in self defence. That the victim's family are still bitter stemming from the fact that the accused had some sort of obsessive kind of love for the deceased to the point that the family believed that she had bewitched him as she was also jealousy. That the community and the local administration confirm that both the deceased and the accused used to have frequent squabbles in their marriage which had not been resolved. That the probation department confirm that the accused does not show any remorse as she claims that her actions were justified as she was acting in self defence and that she was at the time intoxicated. They also indicated that the deceased and the accused had been in a relationship marred with drama and frequent fights over allegations of infidelity. That the accused had a motive to harm the deceased after being informed by a close associate that the deceased had brought another woman in the house the previous night. It is the view of the probation officer that the offender has a callous disregard for others and hence a non-custodial sentence is not deterrent enough to prevent re-offending. It was recommended that the accused is not suitable for a non-custodial sentence.

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, the maximum sentence is usually imposed on the worst form of offenders. Looking at the circumstances of this case, I am of the view that the accused does not deserve the maximum sentence of life imprisonment. It is noted that the offence was committed as a result of disagreement between the accused and the deceased over issues of infidelity in their marriage. Apparently, both the accused and the deceased had been separated for a period of one year due to those problems and that the accused herein had gotten a tip off from a close associate that the deceased had brought in another woman into the house and that the accused, fueled by jealousy confronted the deceased who was then reported to have been intoxicated and lying in bed and whom the accused stabbed him with a knife. It was the view of the community members and the family of the victim that the accused had gone to visit the deceased solely to eliminate him for having entertained another woman. They also confirmed that the accused had been a jealous woman with a fetish obsession and control over the deceased. The family of the deceased is still bitter over the death. The probation officer in her observation noted that the accused did not express any remorse and appeared relaxed and non-challant without a care in the world. It was the view of the probation officer that the accused does not deserve a non-custodial sentence as the same is not sufficient to deter re-offending.
6. 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 that the accused was in custody since 7/12/2024 and that such period must be considered in line with the dictates of section 333(2) of the [Criminal Procedure Code](#). It is noted also that the accused has saved precious judicial time by pleading guilty to the charges. It is noted that the offence was committed as a result of disagreement between the accused and the deceased over issues of infidelity in their marriage. Apparently, both the accused and the deceased had been separated for a period of one year due to those problems and that the accused herein had gotten a tip of from a close associate



that the deceased had brought in another woman into the house and that the accused, fueled by jealousy confronted the deceased who was then reported to have been intoxicated and lying in bed and whom the accused stabbed him with a knife. It was the view of the community members and the family of the victim that the accused had gone to visit the deceased solely to eliminate him for having entertained another woman. They also confirmed that the accused had been a jealousy woman with a fetish obsession and control over the deceased. The family of the deceased is still bitter over the death. The probation officer in her observation noted that the accused did not express any remorse and appeared relaxed and non-challant without a care in the world. It was the view of the probation officer that the accused does not deserve a non-custodial sentence as the same is not sufficient to deter re-offending. From the circumstances of the case as presented by the prosecution while furnishing the facts, it is noted that the accused had visited the deceased and demanded to know why he had been cheating on her and suddenly stabbed him with a kitchen knife on the back and then ran away. The autopsy report dated 9/12/2024 by Dr. Collins Odinga indicated that the cause of death was cardiopulmonary collapse following penetrative chest injury with perforated upper lobe of the left lung. The deceased could not survive from those injuries. The deceased did not deserve to die in the manner he did since the accused could have resorted to other channels of redress instead of killing her husband. It was unacceptable for the accused to eliminate the deceased on grounds of infidelity in the marriage. Under normal circumstances, couples who are unable to co-exist peacefully always have the option to separate or divorce so that each can lead their separate lives. Going by the sentiments of the probation officer in the aforesaid report, it is clear that the accused has some anger related issues which warrants a custodial rehabilitation before she could be released back to the society. The custodial rehabilitation will help to mould her into a better individual before being released back to the community.

8. In the result, I order the accused herein Vivian Akoth Okumu to serve a sentence of eight (8) imprisonment which shall commence on the 7/12/2024.

DATED AND DELIVERED AT SIAYA THIS 7TH DAY OF JULY 2025.

D. KEMEI

JUDGE

In the presence of:

Vivian Akoth Okumu.....Accused

Ooro E.....for Accused

M/s Kerubo.....for Prosecution

Okumu.....Court Assistant

