



Republic v Tuda (Criminal Case E051 of 2024) [2025] KEHC 9789 (KLR) (7 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E051 OF 2024**

DK KEMEL, J

JULY 7, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MOSES OMONDI TUDA ACCUSED

RULING

1. The accused herein Moses Omondi Tuda 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 12th 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 on the 28th day of November 2024 at Jina village in Jina Sub Location, Gem Sub-County within Siaya County, unlawfully killed one Samuel Ouma Tuda. The accused pleaded guilty and was convicted accordingly.
2. The sentencing hearing proceeded on 20th June 2025. Mr. Ooro E for accused submitted *inter alia*; the accused is a first offender and remorseful and regrets the incident; that the deceased was the accused's brother; that he never intended to harm his brother and seeks for leniency; the accused is a family man with children to take care of; that he suffers from an ailment which requires proper medical attention which might not be available in prison; that he has saved the court's judicial time by pleading guilty to the charge; that a non-custodial sentence be imposed.
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 used to quarrel a lot when intoxicated and would abuse the accused over murram that he had began extracting in the homestead and that the two fought whereupon the accused hit him with a cane and left him as he was too intoxicated. That the deceased later died. That the rest of the family members indicate that the accused had been hostile to the deceased who was the eldest brother and eventually killed him so as to ensure that he had no impediments



towards his business of murrum harvesting and which situation has forced most of the family members to flee from the area. Further, the family members are not ready to forgive him as he does not take accountability for his actions. It also indicates that the accused is not remorseful as he does not take any accountability for his actions. The community and the local administration indicate that the accused is a person of anger and very violent and who has frustrated his siblings all of whom have fled their homes. Further, they claim that the accused has been threatening his neighbours and that they view him as a problematic person and that there is a likelihood that he might be lynched if released on a non-custodial sentence. The community further believes that the accused requires a custodial rehabilitation which will have an impact on his behavior. It was the recommendation of the Probation Officer that she does not recommend 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 wrangles and disputes between the deceased and the accused over murrum harvesting from their family land which precipitated into a fight between the two. It is also noted that the accused has saved the precious judicial time by pleading guilty to the charges herein and which will be taken into consideration during sentence herein. Apparently, the deceased was at the time intoxicated when the fight broke out wherein the accused picked up a cane and hit him and then left him for dead and went to his house only for the deceased's body to be discovered the following day. It also transpired from the pre-sentence report that the accused had been a troublesome person with a high temper to his family members including the deceased as he wanted to have a monopoly over the murrum excavation business on their family land. The community and the local administration together with the family of the deceased have voiced their concerns that the accused might be lynched if he is released on a non-custodial sentence due to his bad behavior in the community as can be seen by the fact that he had driven out all his family members and who have been living in fear of the accused. It was their view that the accused requires a custodial rehabilitation before being released back to the society. It is also instructive that the deceased could have been alive were it not for the accused's ungovernable anger as indicated in the report that he hit the deceased with a cane and left him for dead as he went to his house without a care in the world.
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.”
7. It is noted that the accused was in custody since 27/11/2024 and that such period must be considered in line with the dictates of section 333(2) of the [Criminal Procedure Code](#). It is noted that the offence was committed as a result of wrangles and disputes between the deceased and the accused over murrum harvesting from their family land which precipitated into a fight between the two. Apparently, the deceased was at the time intoxicated when the fight broke out wherein the accused picked up a cane and hit him and then left him for dead and went to his house only for the deceased's body to be discovered the following day. It also transpired from the pre-sentence report that the accused had been a troublesome person with a high temper to his family members including the deceased as he wanted to have a monopoly over the murrum excavation business on their family land. The community and



the local administration together with the family of the deceased have voiced their concerns that the accused might be lynched if he is released on a non-custodial sentence due to his bad behavior in the community as can be seen by the fact that he had driven out all his family members and who have been living in fear of the accused. It was their view that the accused requires a custodial rehabilitation before being released back to the society. It is also instructive that the deceased could have been alive were it not for the accused's ungovernable anger as indicated in the report that he hit the deceased with a cane and left him for dead as he went to his house without a care in the world. It is noted from the autopsy report dated 9/12/2024 which was conducted by Dr. Ochieng Victor that the cause of death of the deceased was cardiopulmonary collapse secondary to tension pneumothorax secondary to chest trauma (blunt) secondary to assault. The deceased could not survive from the said injuries and which implied that the accused was out to get rid of the deceased so as to have a free hand in the marrum excavation business on the family land. It was unfortunate and unnecessary for the accused to resort killing the deceased just so as to remain alone and enjoy the proceeds of the marrum business alone at the expense of the deceased and the rest of his siblings. I find this was extremely selfish on the part of the accused. I find that a custodial rehabilitation is appropriate in the circumstances before the accused can be released back to the society. It is also noted that the accused has saved the precious judicial time by pleading guilty to the charges herein and which will be taken into consideration during sentence herein.

8. In the result, I order the accused herein Moses Omondi Tuda to serve a sentence of ten (10) years imprisonment which shall commence on the 27/11/2024.

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

D. KEMEI

JUDGE

In the presence of:-

Moses Omondi Tuda Accused

Ooro E for Accused

M/s Kerubo for Prosecution

Okumu Court Assistant

