



REPUBLIC OF KENYA



**State v Otieno (Criminal Case E016 of 2022) [2025] KEHC 9577 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9577 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E016 OF 2022**

**DK KEMEL, J**

**JULY 4, 2025**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**FRANCIS STEPHEN OTIENO ..... ACCUSED**

**RULING**

1. The accused herein Francis Stephen Otieno was charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on the night of 15<sup>th</sup> and 16<sup>th</sup> day of April 2022 at Masumbi village South East Alego Sub Location in Alego Usonga Sub County within Siaya County murdered Bornclyff Odhiambo.
2. Vide the judgment of this court dated 13/6/2025, the accused was found guilty for the offence of manslaughter under Section 202 as read with Section 205 of the *Penal Code* and was convicted therefor accordingly.
3. The sentencing hearing proceeded on 20/6/2025. Mr. Ooro E for the defence submitted inter alia; that the accused is a first offender and remorseful for the offence; that he prays for leniency and that the court should consider the circumstances leading to the incident where he had to defend himself; that he is still young with three children who rely on him for support; that the accused was intoxicated at the time and thus had no premeditation but has since abandoned taking alcohol.
4. Mr. Mocha for the prosecution left the matter to the court.
5. This court called for a pre-sentence report by the Probation department. The same is dated 20/6/2025. The same indicates inter alia; that the accused is an alcoholic and was intoxicated at the time of the incident; that he confronted the deceased while armed with a metal rod while the deceased had a machete; that he is not sorry for the incident as he believes he was justified to defend himself; that the family of the victim are still bitter over the death of their kin; that the community views the accused as



a serious alcoholic but not a threat to anyone in the area; that the probation officer recommends for a custodial rehabilitation due to the offender's lack of remorse and alcoholism.

6. I have given due consideration to the mitigation submissions of learned counsels and the pre-sentence report. 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 merit a sentence of life imprisonment. It is noted that the offence was committed as a result of a fight between the accused and deceased in which both of them were armed with dangerous weapons and that both of them sustained injuries save only that the deceased succumbed to those injuries while the accused survived. Apparently, the accused was intoxicated at the time and had been involved in an altercation with the mother and sister of the deceased before the accused snatched a metal rod and went and confronted the deceased who was then armed with a machete. It also transpired that the accused has been a serious alcoholic in the area but not a threat to anyone. I find that even though the accused was intoxicated at the time of the incident, it is clear that he had used excessive force against the deceased which led to his death. It is trite that all homicides are unlawful unless authorized by law. The accused, upon an altercation with the mother and sister of the deceased and upon learning that the deceased had been called to come home and assist to repel the accused, he snatched a metal rod and went ahead to confront the deceased who was then on his way home. Had the accused opted to proceed to his home, the deceased could be alive today. The accused's claim that he should be left off the hook just because he was defending himself should be rejected. It is noted that the accused still maintains his stance of not being remorseful even after being found guilty by this court. I find that a custodial rehabilitation is appropriate for the accused and that the same will help to mould him into a better individual before being released back to the society.
7. 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 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] KLR”
8. It is noted that the offence herein was committed when a fight broke out between the accused and the deceased both of whom were at the time armed with crude weapons. Even though the accused sustained cut wounds on his head, the accused hit the deceased using a metal rod with only one single blow that snuffed out the life of the deceased on the spot. The autopsy report dated 27/4/2022 by Dr. Juma Gabriel Wekesa indicated that the deceased sustained a severe fracture of the skull and formed the opinion that the cause of death was severe head trauma with a shattered skull (intracranial hemorrhage). The deceased could not survive from the said injuries. It is instructive that after the incident, the accused did not bother even to report to the authorities about the incident even as he sought medication for himself and that the police had to smoke him out of a certain hospital and charged with the offence. I find that the circumstances herein warrant a custodial sentence for some period of time in order for the accused to reflect on the incident and his life before being released back to the society. It is also appropriate that upon release, the accused should serve under probation for some period under the supervision of the Siaya County Probation Office. It is also noted that the accused managed to post bail soon after his arraignment in court and therefore the provisions of Section 333 (2) of the *Criminal Procedure Code* does not apply. The sentence therefore shall commence from the date of conviction namely 13/6/2025.



9. In the result, I order the accused herein Francis Stephen Otieno to serve a custodial sentence of two (2) years imprisonment which shall commence from the date of conviction namely 13/6/2025 and thereafter to serve under Probation for three (3) years under the strict supervision of the Siaya County Probation Officer.

**DATED AND DELIVERED AT SIAYA THIS 4<sup>TH</sup> DAY OF 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Francis Stephen Otieno.....Accused

Ooro F.....for Accused

M/s Kauma.....for Prosecution

Okumu.....Court Assistant

