



**Republic v Okumu (Criminal Case E013 of 2023)
[2024] KEHC 5376 (KLR) (17 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E013 OF 2023**

DK KEMEL, J

MAY 17, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ROMANO SAKWA OKUMU ACCUSED

SENTENCE

1. The accused herein Romano Sakwa Okumu has been 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 25th day of March, 2023 at around 1900 hrs at Ndengelwa area, in Bungoma South Sub- County within Bungoma County, he murdered Edwin Wekesa.
2. The charge against the accused herein was later reduced to one of manslaughter following a plea bargain agreement dated 4.3.2024. The court duly accepted the said plea agreement pursuant to the provisions of section 137H of the *Criminal Procedure Code* and that it satisfied itself on the factual basis of the plea agreement and that the accused was competent, of sound mind and had acted voluntarily in accordance with section 137G of the *Criminal Procedure Code*.
3. The new charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* was subsequently preferred against the accused herein. The particulars are that on the 25th day of March 2023 at 1900 hours at Ndengelwa area in Bungoma South Sub- location County within Bungoma County he unlawfully caused the death of Edwin Wekesa.
4. The facts in support of the charge as disclosed in the plea agreement dated 4.3.2024 are that on the 25.3.2023 at around 1900 hours the deceased herein Edwin Wekesa was in the company of two friends namely Christopher Simiyu and Moses and were the heading to Ndengelwa market and while on the way they met a girl named Ednah whose home was nearby and who started a conversation with the deceased and that his companions gave way so as to enable him continue with his chat with the



girl unhindered. Suddenly, the accused herein and another arrived and confronted the deceased and demanded to know why he had visited the area yet he had earlier warned him to stay away from the area. A confrontation ensued whereby the accused pushed the deceased onto the ground and then stabbed him with a knife. The deceased's friends sought for help as they rushed him to hospital but he died soon afterwards. Investigations were commenced and that the accused was arrested and charged with the offence of murder but which was later reduced to manslaughter following a plea agreement. A post mortem was later conducted on the body of the deceased by Dr Kosgey of Bungoma County Referral Hospital who formed the opinion that the cause of death was excessive bleeding from a stab wound on left thigh region. The autopsy report was produced as exhibit one.

5. The accused admitted the charge and further knowingly, voluntarily and truthfully admitted the facts read out herein. He was duly convicted on his own unequivocal plea of guilty to the offence of manslaughter.
6. During the sentence hearing, Miss Komora for the accused submitted that the accused is remorseful and prays for leniency. It was submitted that the accused has had time to reflect on his actions and has opted to enter into a plea bargain with the prosecution and thus has saved the court precious judicial time. It was finally submitted that the accused has been supporting his family and that a non-custodial sentence is suitable. Learned counsel submitted that the allegations raised in the pre-sentence report over criminal activities attributed to the accused have not been substantiated such as evidence of conviction etc.
7. Miss Kibet for the prosecution urged the court do consider the fact that a life was lost and that the deceased could have contributed to the development of his society. That the deceased died a painful death. She also submitted that the pre-sentence report indicates that the accused has a criminal past such as impregnating young girls and escaping and that he is a member of a dangerous gang in the area. Learned counsel sought for a custodial sentence.
8. The court called for a pre-sentence report. The same is dated 25.3.2024. The same indicated that the accused has a criminal past and a member of a criminal gang in the area and that he has had some run ins with the clan elder over his spate of impregnating young girls and running away from responsibility. It indicates that the accused does not enjoy community ties in that he is wanted for a spate of criminal activities in which some of his gang members are facing charges before Kitale court. According to the probation officers, the accused is likely to abscond community supervision since he cannot go to his sister's home having run away from his parents' home. The probation officer established that the incident arose from a love affair with a certain girl in the village that he and deceased were seeing. The report further indicates that the accused's relatives have not even bothered to visit him in prison due to his wayward behaviour. It was the view of the probation officer that a custodial rehabilitation is appropriate in the circumstances.
9. I have given due consideration to the submissions of learned counsels as well as the sentiments of the County Probation Officer Bungoma. Under section 205 of the *Penal Code*, manslaughter is punishable by a maximum sentence of life in prison. However, this represents the maximum sentence which is usually reserved for the worst of such cases. This does not appear to fall in the category of the most heinous examples of manslaughter as regards the circumstances of the accused herein. The circumstances of the offence appear to me to be tragic and unintended since the accused and the deceased seemed to have been having a love affair with the same girl in the village. It can be termed a love triangle of some sorts. The accused must have been angered by the deceased in pursuing the same girl and that the confrontation led to the tragic circumstances. However, the conduct of the accused in arming himself with a knife, appear to indicate that he was out to harm the deceased and hence had he not resorted to the use of such a weapon, the deceased could not have died. It is clear that the accused



intended to seriously harm the deceased and thereafter get rid of competition over the girl they were both seeing. However, due to the fact that the incident took place while the girl who was the object of their rival love, I find that the killing of the deceased was not intended by the accused. I am therefore inclined to rule out life imprisonment for the accused.

10. Case law could be the starting point in determining a custodial sentence for manslaughter since the Judiciary Sentencing Guidelines are silent on the path to take in manslaughter instances. Currently, the said guidelines are being reworked with a view to having them anchored in law. In the case of [VMK v R](#) [2015] eKLR ten years imprisonment was given for manslaughter. When a dangerous weapon is used in the commission of the crime, courts are more likely to sentence the offender to life in prison. However, the circumstances of each case must be taken into consideration. For instance, in the case of [Republic v Daniel Okello Rapuch](#) [2017] eKLR a sentence of twelve months imprisonment was meted out on a man who killed another on allegation of being involved in an illicit love affair with his girlfriend. The facts in the present case are that the accused attacked the deceased when he found him talking to a certain girl from the area. Apparently, both deceased and accused were seeing the said girl and that the accused had earlier warned the deceased to stay away from the said girl. The confrontation therefore led to the death of the deceased. However, the use of a knife by the accused was not warranted since there was no evidence that the deceased was also armed with similar a weapon. The action by the accused was unwarranted as he used a dangerous weapon on the deceased. Had he controlled his anger, the deceased could probably be alive today. The conduct of the accused in walking around with a knife left no doubt that he intended to cause harm to his victim. The circumstances revealed the accused as a person who is a danger to the society due to his conduct in walking around while armed with a knife. Such kind of conduct must be discouraged and hence the need for a custodial sentence. Again, the pre-sentence report has captured the fact the accused is a member of a criminal gang in the area and that he is a habitual impregnator of young girls in the area. The report indicates that he has no family or community ties and thus making it hard to conduct community rehabilitation. I find a custodial sentence is suitable in the circumstances as the same will help to mould him into a better person before being released back to the society.
11. The accused has sought for leniency regarding the incident. The Court of Appeal in [Charo Ngumbao Gugundu v Republic](#) [2011] eKLR held as follows:-

“Further the law is that sentence imposed on an accused persons must be commensurate in the moral blame worthiness of the offender and that it is thus not proper exercise for the court to fall to look at the facts and circumstances of the case in their entirety before setting for any given sentence – See *Ambani v Republic* [1990] eKLR.”.
12. From the postmortem report produced as exhibit 1, the injuries inflicted on the deceased comprised of deep cut wound on the left thigh region extending to the femoral vessels which were severed. The opinion of the pathologist is that the cause of death was excessive bleeding from a stab wound on left thigh region. The injuries inflicted by the knife were severe as it transpired that the deceased died the same day while undergoing treatment. The deceased did not deserve to die in such circumstances which could have been resolved amicably since the accused did not even find the deceased in the act of sexual intercourse with the girl he claimed was his girlfriend and in which he had warned the deceased to keep from her. Had the accused lessened his knife wielding conduct, then the incident could have been avoided. The accused seemed to have found deceased as an intruder and an interloper and a competition over the same girl they were both seeing and decided to get rid of him by stabbing him to death. The accused thus took the law into his hands.



13. The accused has been in custody since the time of his arrest to date. It is noted that the accused in pleading guilty to the lesser charge of manslaughter, has saved judicial time and which will be taken into consideration during the sentencing. Learned counsel for the prosecution has urged the court for a custodial rehabilitation for the accused. Indeed, the circumstance of the offence together with the accused's family background warrants a custodial rehabilitation for the accused herein. He will surely benefit from the same despite the fact that he is still a young man with a full life ahead of him. The custodial rehabilitation will help to mould him into a better person before being released back to the society.
14. In view of the foregoing observations, I order the accused herein Romano Sakwa Okumu to serve imprisonment for a period of ten (10) years' imprisonment which shall commence from the date of his arrest namely 25.3.2023.

DATED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF MAY 2024.

D KEMEI

JUDGE.

In the Presence of:-

Romano Sakwa Okumu Accused

Miss Komora for accused

Miss Kibet for Prosecution

Kizito Court Assistant

