



**Republic v Opondo (Criminal Case E007 of 2024)  
[2024] KEHC 7858 (KLR) (19 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7858 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E007 OF 2024**

**JN KAMAU, J**

**JUNE 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JAMES MUSA OPONDO ..... ACCUSED**

**SENTENCE**

1. The Accused person was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 (Laws of Kenya). He entered into a Plea Agreement on 24<sup>th</sup> April 2024 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
2. The facts of the case were that on 28<sup>th</sup> February 2024 at around 6.40pm, the Accused person left his house and proceeded to the house of one Wycliffe Kote, to settle a dispute between his younger brother Jacob Kivoka (hereinafter referred to as the “deceased”) and the said Wycliffe Kote who was their father.
3. On arrival at the said home, he found the deceased alone. The deceased refused to have a discussion with him and he decided to leave. As he made his way out of the deceased’s house, the deceased attacked him and cut him on the head and right hand with a panga.
4. The Accused person raised alarm and was rescued by their father who took him to Esiembero Police Post where he made a report and was advised to seek medication. They then proceeded to Bunyore dispensary where they were referred to Emuhaya Sub-county Hospital where the Accused person was treated and discharged.
5. The following day on 29<sup>th</sup> February 2024, the Accused person went to his father’s house and found that the deceased had taken their father’s clothes to his house. He then went back to his house. Their father later came to his house and informed him that the deceased had chased him away. He spent the night at his house.



6. When the Accused person went to check on him on 1<sup>st</sup> March 2024, he met the deceased and a confrontation ensued between them. The deceased told him that he did not want to see him at his residence again. He left for his house.
7. Along the way, the Accused person met one Khavokolo who was tilling the farm of their neighbor and asked to assist him tie up the deceased. They then went up to the deceased's house, got hold of him, tied him up on both hands and legs using a rope and assaulted him with a stick. They left him untied.
8. Later in the day, the Accused persons' and the deceased's father arrived home and found the deceased tied up and in pain within the compound. He inquired from him what had happened and the deceased informed him that the Accused person tied him up and assaulted him. Their father untied him and took him inside the house.
9. On 4<sup>th</sup> March 2024, their father went to check on the deceased in his house. However, he found him dead. He informed the Accused person what had happened and reported the matter to the Area Assistant Chief who informed Police Officers from Luanda Police Station. They visited the home and took the deceased's body to Coptic Mission Hospital.
10. The Accused person was then arrested. In the course of investigations on 8<sup>th</sup> March 2024, Chief Inspector Josephat Muia recorded the Accused person's confession statement.
11. The cause of the deceased's death was determined to have been severe head injury secondary to trauma caused by a sharp object. The Postmortem Report dated 9<sup>th</sup> March 2024 was produced as evidence in this court and marked as Exhibit 1.
12. Having entered into a Plea Agreement, the State urged this court to sentence the Accused person to fifteen (15) years imprisonment while the Accused person sought for five (5) years imprisonment.
13. In his mitigation, the Accused person was remorseful since the deceased was his brother. He pointed out that he had differences with the deceased because of the way the deceased mistreated their father and that he was only disciplining him but unfortunately, he died out of the beatings. He urged the court to consider the recommendations by the Probation Officer in his Pre-sentence Report and grant him a non-custodial sentence. He pointed out that in the event the court was inclined to give a custodial sentence then it should consider the time he spent in custody during trial as he was arrested on 5<sup>th</sup> March 2024 and had been in custody since then. He apologized to the court, his family (of the deceased) and to the clan.
14. On its part, the Prosecution noted that the deceased and the Accused person were brothers. It submitted that the Accused person was the elder brother to the deceased and he should have reprimanded him in a manner that could not have caused him death. It urged the court, in its discretion, to consider the injuries that the deceased sustained and the objectives of sentencing noting that the Pre-sentence report was positive and the Accused person and deceased family had sought for leniency.
15. According to the Pre-Sentence Report of Benard O. Musitia, Probation Officer, Vihiga County that was dated 11<sup>th</sup> June 2024 and filed on 13<sup>th</sup> June 2024, the Accused person was forty (40) years old. After dropping out of school in Standard one (1), he engaged in herdsmanship, small scale farming and hired casual labour. He was married and was blessed with two (2) children. Healthwise, he complained of occasional nose bleeding. He had no history of drug abuse.
16. He admitted having committed the offence and stated that he did not intend to kill the deceased. He was remorseful and prayed for leniency of the court. He pointed out that he was ready to seek reconciliation with the immediate and extended families, clan and members of the community. He



- sought to be accorded a second chance on a non-custodial sentence so as to get the opportunity to provide for his family.
17. His family pleaded for leniency on behalf of the Accused person stating that they were depending on him and would thus suffer double jeopardy if he was incarcerated because they lost the deceased who was also their son as the offence was committed within the family set up, he being a brother to the deceased. They vouched for him being released on grounds that he was a responsible, sociable and hardworking person.
  18. The Local Administration viewed him as soft spoken, honest and a respectful young man who had never been involved in any anti-social incidents. They pointed out that he related well with members of the community. They added that although they did not support his actions, it was the deceased who provoked him. They sought for leniency of court on his behalf.
  19. The Probation Officer recommended a non-custodial sentence and that the offender be placed on probation for a period of three (3) years.
  20. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
  21. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
  22. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
  23. Although the Accused person had never been charged with any offence previously prior to the incident and the fact that he had sought leniency, the nature of the injuries that the deceased sustained showed the malice that he had at the material time. The deceased must have died a harrowing death as the Accused person and another assaulted him with a stick while tied up.
  24. From the facts that were given in the Pre-Sentence Report, the Accused person killed his brother following an unsolved dispute between the deceased and their father. It was evident that the incident occurred due to the intolerant provocation by the deceased and mistreatment of their father.
  25. Killing someone is an abomination in the society. Justice not only needed to be done but it had to be seen to be done noting the sentiments of the victim family, the community and local administration. The views of secondary victims, the community and local administration determines what is deemed to be justice.
  26. Having considered the facts of this case, the Accused person's mitigation, the Prosecution's response thereto, the Pre-Sentence Report and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence of three (3) years' probation was suitable and adequate herein purely because the Accused person's father felt that it would be double jeopardy if the Accused person was jailed when he had already lost a son, the deceased herein.



27. The deceased's family had also forgiven him over the death of the deceased and together with the community, local administration and the Accused person's father had sought that he given a lenient sentence. The Accused person was a first offender and was remorseful of having committed the offence.
28. Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) that the Accused person's counsel had sought to be considered in the event the court was inclined to give the Accused person a custodial sentence had now been rendered moot in view of the sentence that had now been meted out against the Accused person herein.

**DISPOSITION**

29. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to three (3) years' probation to run from the date of this Sentence.
30. It is hereby directed that the Accused person be and is hereby released from custody forthwith unless he be held for any other lawful cause to commence his probation sentence.
31. Orders accordingly.

**DATED** and **DELIVERED** at **VIHIGA** this 19<sup>th</sup> day of **June** 2024

**J. KAMAU**

**JUDGE**

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