



**Republic v Odidi (Criminal Case E007 of 2023)
[2024] KEHC 9812 (KLR) (25 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 9812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E007 OF 2023
PN GICHOHI, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KENNEDY OCHIENG ODIDI ACCUSED

SENTENCE

1. When the accused person herein (Kennedy Ochieng Odidi) pleaded not guilty on 08/02/2023 to the charge of murder, the Court granted him bond terms and after pretrial, the case was set for hearing severally but the case could not take off for reasons that he was unwell. When it finally came for hearing on 07/05/2024, three witnesses were ready to testify but parties agreed to explore plea bargain.
2. They finally signed the plea bargain agreement and reducing the charge of murder to Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. The particulars of the offence were that on the 19th day of September 2020 at Rhonda area within Nakuru West sub- county within Nakuru County, he unlawfully caused the death of Dominic Chweya Mogaka.
3. When the charge was read to him 11/06/2024 and in Kiswahili language which he said he understood well, he replied:- “Ni Ukweli” (It is true). The facts were that on 19th day of September 2020 at about 7.30 pm at Rhonda area within Nakuru West sub- county within Nakuru County, the accused person picked a quarrel with the deceased who stood outside their plot in Stima line within Rhonda .
4. The accused person then requested his colleague by the name Brian to go to the house and bring him a knife. Brian complied and brought the accused the knife. The Accused person used the said knife and stabbed the deceased on the right upper arm.
5. The deceased bled profusely and people who were around him tried to administer first aid to control the bleeding by use of pieces of cloth. In the meantime, one Gladys Moraa Mekenye sought a Tuk Tuk and the deceased was taken to Nakuru Provincial General Hospital for treatment but he succumbed



to the injury on 22nd September 2020. The accused person ran away after the incident. Post mortem was carried out on 20/09/2020 and the cause of death was Hypovolemic shock following blood loss due to sharp vascular trauma in keeping with homicide.

6. On 01/01/2023 and through a tip off, Inspector Haron Anunda got to know where the accused was on that particular day and how he was dressed. He was also given accused's photo. He therefore mobilised police officers to track the accused person. They got information that the accused was spotted at Jasho area armed with a knife and robbing people.
7. They proceeded there and on seeing the police, the accused person started running away but police officers chased him. They arrested him while he was still armed with the knife which he had tied to his neck. He was charged with the offence of murder now reduced to manslaughter. The accused person admitted the facts as read to him and a plea of guilty was entered.
8. Mr Kihara, the learned Prosecution Counsel told this Court that there are no previous records for the accused person.
9. The pre-sentence report called for by this court and filed on 15th July 2024 indicates that according to the accused person, both accused and the deceased were intoxicated. That the deceased had beaten up the accused's son and accused was infuriated. When he sought explanation from the deceased, the deceased became violent leading to the commission of this offence.
10. Further, the accused person regretted his action and that he had no intention of causing harm to the deceased. He further stated that he had learnt the hard way the benefits of seeking alternative way of resolving disputes.
11. The deceased's family however are said to be in pain for loss of a young man who had just married. That the death left a widow and a toddler for who they seek justice through court process.
12. According to the local administration, the accused person belongs to a criminal gang infamous in Nakuru for extorting money from residents and through violent acts while armed with swords even during daylight. Their view is that the accused be isolated from the community.
13. The report concludes that the accused person is aged 30 years, married but separated. That he has previous criminal records for robbery with violence being Criminal Case No. E056 of 2023 and E 058 of 2023 as obtained from the police records. In the circumstances, the Probation Officer found the accused not suitable for Probation Orders.
14. In mitigation made after receipt of this report, Ms Daye for the accused person submitted that the accused person was extremely remorseful for the incident that led to the loss of life at a youthful age. That the accused seeks leniency for reasons that he has a wife and a daughter who depends on him before his incarceration.
15. Counsel urged the Court to grant a non- custodial sentence and that in the event the Court is not inclined not to grant the same, then she proposed a sentence of five (5) years imprisonment.
16. On his part, Mr. Kihara was in agreement with the Probation Officer's report in regard to a custodial sentence. He urged the Court to consider the grave violence by accused person and impose an appropriate sentence.

Determination

17. In determining the appropriate sentence in this case, the Court has to have in mind the objective of that sentence. Those objectives are set out in [*Judiciary Sentencing Policy Guidelines*](#) that is :-



1. To punish the offender for his/her criminal conduct in a just manner.
 2. To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. To enable the offender reform from his criminal disposition and become a law-abiding person.
 4. To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims, communities' and offenders' needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. To protect the community by incapacitating the offender.
 6. To communicate the community's condemnation of the criminal conduct.
18. Having heard the facts in this case, there is nothing to show that the deceased and accused person were intoxicated during this incident. It was the accused person who picked a quarrel with the deceased on allegation that the deceased had beaten accused's son. The accused was infuriated by the answers given by the deceased.
19. The accuse person cannot purport to say now that he did not intend to cause harm to the deceased. Calling for a knife from his house after a quarrel with the deceased meant that he intended to use it to cause harm on the deceased.
20. Upon receipt of the said weapon , the accused immediately actualised that intention by stabbing the deceased to the extent that the stab injury led to profuse bleeding. That injury led to death the following day.
21. He had no remorse. He fled and was only arrested slightly over two years after the incident. The facts reveal that during that period, and in particular, around the time he was arrested, the accused person was armed with a knife and robbing people. He was actually arrested as he tried to escape on seeing the police officers.
22. Though Mr. Kihara stated that the Prosecution did not have the accused' previous records, both the accused's family and the local administration confirmed that the accused has two cases in court for robbery with violence. Those numbers have been given in that report. However, it could be that those cases are not finalised. A criminal record for the said cases would only be cited after prove of a conviction by a court of law.
23. That notwithstanding, there was no mention of the same by the defence even though the report and facts herein are indicator that the accused is a person with violent traits. That caused the death of the deceased and robbing his newly married wife and their toddler of their bread winner to say the least. This Court is in agreement with the Probation Officer. This is not a suitable case for a Probation Order.
24. Further, this court finds that the accused person is not suitable for a non- custodial sentence. Considering the aggravating circumstances in this case, and the circumstances under which the offence was committed, this is a case calling for a deterrent sentence while also considering the accused's mitigation.
25. This Court is satisfied that sentence of eight (8) years imprisonment is appropriate.



26. Under Section 333 (2) of the Criminal Procedure Code , the period the accused person has spent in custody awaiting trial should be taken into account. From the record, the accused person has been in custody since 30/01/2023.
27. In conclusion , the Court makes the following orders:-
1. The accused person is hereby sentenced to serve eight (8) years imprisonment.
 2. The sentence to run from 30/01/2023.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH DAY OF JULY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kihara for the State

Kennedy Ochieng Odidi- Accused person

Ms Daye for Accused person

Ruto- Court Assistant

