



**Republic v Ochare (Criminal Case E012 of 2022)
[2024] KEHC 8824 (KLR) (16 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E012 OF 2022
MS SHARIFF, J
JULY 16, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

RODGERS OTIENO OCHARE ACCUSED

SENTENCE

1. The accused person Rodgers Otieno Ochare was arraigned before this court on 23.6.2022 and charged with the offence of murder contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars whereof were that on 12th April 2022 at about 16.52 hours while at Wawidhi Location in Nyando Sub-County within Kisumu County he murdered one Isaac Otieno.
2. According to an age assessment report dated 26.4.2022 prepared by Dr. Onyango a dental consultant at JOOTRH – Kisumu, the accused was at the time of commission of the offence aged 16 years. He is currently 18 years and 11 months old as he was born on 31.8.2005.
3. *Vide* a plea agreement dated 13th February 2024 the charges against the accused were reduced to manslaughter contrary to Section 202 of the Penal Code and the accused person then pleaded guilty to the charge of manslaughter.
4. This court directed a pre-sentence report to be filed before the court could sentence the accused person. I have perused the said report and note that the community where the accused hails from is still hostile towards the accused who is said to have an aggressive and volatile character. The family of the victim who was a 17 years old and a form three student at Agai Mixed Secondary School are yet to come to terms with their loss of a son whom they had invested in heavily in his education and they had legitimate expectation that he would have elevated their economic status in the near future.
5. The facts of the case are that on 12.4.2022 at noon one Stephen Amollo had instructed the accused, Rodgers Otieno Ochare and Robin Otieno to go and graze cattle and whilst at the pasturing fields



the accused encountered the deceased one Isaack Otieno and a dispute arose over pasturing rights. According to the pre-sentence report, the deceased who was in the company of other boys accosted the accused who was new in the village wherefore the accused ran to the house of his relative. Stephen Amollo, fetched a spear and returned back to the pasturing fields whereat he attacked the deceased by stabbing him with the spear and the deceased suffered fatal injuries therefrom as evidence by the postmortem report produced as p. exhibit no. 1 which reveals that the deceased died due to massive haemothorax resulting from severe penetrating chest injury inflicted by a sharp object.

6. The accused hails from a dysfunctional family and is said to have been raised by his maternal grandmother. He is thus a product of a community that failed him hence his violent nature. I note that whereas the accused was provoked by the deceased and the other boys who had accosted him, his reaction and mode of self defence was not proportionate to the degree of provocation that he faced. The accused though a minor then had the option of running away to inform the relative of the disagreement but not to arm himself with a spear. A young life was thus lost and this court cannot overstate the gravity of the offence.
7. This court has taken into account the fact that the accused was a minor at the material time and regard must be taken of the sentencing guidelines which dictates that sentence has to meet several objectives namely; retribution, deterrence, rehabilitation, restorative justice, community protection and denunciation.
8. On the balance and for purposes of denouncing the crime committed while at the same time making room for rehabilitation I will place the accused under probation for a period of 4 years and I order that he be committed to Kisumu Senior Probation Hostel for a duration of 4 years given that he has saved judicial time by entering into the plea agreement. The pre trial of 2 years and 3 months and two days has duly been taken into account pursuant to the provisions of Section 333 (2) of the *Criminal Procedure Code*.
9. The manager of Kisumu Prison Remand Home is directed to escort the accused person to Jooth for a medical examination before his committal to Kisumu Senior Probation Hostel.
10. I direct that the hostel management to ensure that the accused person resumes formal education or undergoes a trade training while at the hostel. Further that due to his anger issues the accused to undergo anger management sessions. This is to ensure that he is eventually rehabilitated in preparation for his eventual admission back to the society as reformed and educated individual.
11. This file is marked as closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF JULY, 2024.

M. S. SHARIFF

JUDGE

