



**State v Samuel (Criminal Case E032 of 2023)
[2024] KEHC 12097 (KLR) (19 September 2024) (Sentence)**

Neutral citation: [2024] KEHC 12097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E032 OF 2023
TA ODERA, J
SEPTEMBER 19, 2024**

BETWEEN

STATE PROSECUTION

AND

DENNIS OMWANGE SAMUEL ACCUSED

SENTENCE

1. The offender herein was initially charged with murder contrary to Section 203 as read with 204 of the *Penal Code*. He later entered into a plea bargain agreement with prosecution and the charges were reduced to manslaughter contrary to Section 202 as read with 205 of the *Penal Code*. He pleaded guilty to manslaughter and he was accordingly convicted. This case is now coming up for sentencing. It has emerged from the facts of the case, mitigation the pre-sentence report and the able submissions by defence filed herein, that the deceased died in a love triangle.
2. The deceased and his wife had differed on 30.7.23 and the wife ran away from home and moved in with accused. On 31.7.23, deceased found his wife staying in the house of accused and he confronted them and abused the accused. Deceased and the neighbours to accused managed to convince the wife to go home with him to take care of their children. The wife agreed and on their way home he turned and assaulted the wife and she bled. Members of public intervened and asked deceased to take the wife to hospital and he boarded a motor cycle and accused who was nearby stabbed him with a knife and he passed on shortly thereafter.
3. The offender in mitigation prayed for leniency of this court saying he was 24, the sole provider of his family was remorseful, has good community ties. It was submitted that the offender entered into a plea bargain agreement which saved judicial time and so he ought to be considered for a lenient sentence. Also that he is a first offender and that deceased provoked the accused.



4. The pre-sentence report is favourable to him as it indicates that he is generally a person of good character, a 1st offender, has strong family and community ties and the members of his community do not have any reservations for his release. However, the victim's brother Joseph Omweno Omari indicated that the preferred a jail sentence while his sister Joyce Sebe said it was too early to release accused and also that they will take in the decision of the court. It is clear to me that part of the family of deceased still harbours some bitterness over the death of deceased.
5. The Supreme Court in the *Muruatetu case* set down the following factors to be considered in sentencing in murder case;
 - a) Age of the offender.
 - b) Being a first offender.
 - c) Whether the offender pleaded guilty.
 - d) Character and record of the offender.
 - e) Commission of the offence in response to gender-based violence.
 - f) Remorsefulness of the offender.
 - g) The possibility of reform and social re-adaptation of the offender.
 - h) Any other factor that the court considers relevant.
6. I have considered the nature of the offence, its circumstances, the pre-sentence report, mitigation, submissions, the remand period the youthful age of the offender and that the offender saved judicial time by pleading guilty upon entering into a plea bargain agreement, the fact that he is remorseful and the fact that the family of deceased is still bitter with him and all the necessary factors. On the issue of provocation, accused raised it yet he was found staying in the same house with the wife of deceased with whom he had differed with just a day before. It thus cannot be true that he was provoked as it is very clear that he is the one who on the contrary wronged the deceased. Infact the post mortem report indicates that the deceased sustained a penetrative injury to the lungs which is evidence of the excessive force applied. The offender and the deceased were neighbours and since the family of deceased is still bitter the home environment is thus not conducive at the moment. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement and saved the precious judicial time of the court and expedited the determination of the case. I find that a custodial sentence is thus necessary in this case as this will reform and protect him from the possible hostility from the family of deceased. I proceed to sentence him to serve 7 years imprisonment. The Sentence to run from 21.8.23 when he was first remanded in prison till completion in full.

T.A ODERA

JUDGE

19. 9.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

The offender

Kimanthi -for the State

Court Assistant: Oigo

Mariita for the Offender

