



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Republic v Oketchi (Criminal Case E007 of 2022)  
[2023] KEHC 3543 (KLR) (20 April 2023) (Sentence)**

Neutral citation: [2023] KEHC 3543 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E007 OF 2022**

**JN KAMAU, J**

**APRIL 20, 2023**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**BENSON AMKOA OKETCHI ..... 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 April 18, 2023 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 the night of June 28, 2022 at about 2100 hours, Martin Nandi (hereinafter referred to as “the deceased”) was in his house together with his wife, Ann Awinja Nandi, when he went to his mother’s house which was in the same compound complaining that his duck had been stolen and later found dead. He kept on complaining that his property was being misused. His father, the Accused person herein came out of his house holding a jembe and asked him the motive of his complaints. An argument ensued whereupon the deceased struck the Accused person with a panga on the head and back several times occasioning him injuries. The Accused person fell.
3. He then picked a stick and hit the deceased on his back. He also hit the deceased on the head with the jembe which broke. The deceased fell and the Accused person continued striking him on the back several times. He was oozing blood from his head. Neighbours were attracted to the scene by the deceased’s wife’s screams. Together with the neighbours, the deceased’s wife took the deceased to Great Lake Hospital in Luanda for first aid and referred to Mbale Referral Hospital for a CT Scan. The deceased succumbed to his injuries at Russia Hospital, Kisumu. A post mortem examination was conducted on July 12, 2022. The Pathologist formed the opinion that the cause of death was sub-dural haematoma as a result of a sharp force trauma.



4. The Accused person surrendered himself to Luanda Police Station on the same day and was subsequently charged with the offence of murder.
5. On March 31, 2023, Fanny Masinde, Probation Officer, Vihiga filed a Pre-Sentencing Report dated March 30, 2023. The said Pre-Sentencing Report indicated that the Accused person abandoned his family when his children were of tender age and only re-surfaced fifteen (15) years later. The said Pre-Sentence Report also showed that although he was a frequent Church goer, a teetotaler and never smoked, he used to mistreat his wife. He was also said to be a generally a violent person and his family was still apprehensive of a threat to their lives. He was quarrelsome and had threatened his wife that he would kill her as he had killed the deceased. He had weak links with his own family and the community. His family did not see them living with him again after he killed his son and were therefore objecting to his release.
6. According to the Area Chief, the Accused person was not a good person and there was likelihood of chaos in the community if he was released from prison. The community was hostile to him due to his bad ways as he was also engaged in petty theft and the fact that he was an arrogant person who did not mingle with people. There was likelihood of the community taking the law into their own hands if he was released on a non-custodial sentence. He was also said to have been a sexual pervert preying on young girls and his son's wives.
7. In her recommendation, the Probation Officer stated that the current home environment could not guarantee his safety as his immediate family was hostile and had rejected him while the community was tired of his indiscretions and for having killed his remaining son. The community took the view that he deserved a punitive sentence.
8. In the said Pre-sentence Report, the Accused person had stated that he sold his cow to assist the deceased who was his biological child to access treatment. He averred that the deceased's death was an accident as he had been trying to defend himself from an attack from the deceased. He pointed out that the deceased assisted him financially.
9. In his mitigation, he stated that he was very remorseful of the actions that he did and regretted the same. He added that he was a first offender and sickly. He prayed for the leniency of the court. He asked that the court considers that he had lost a son. The Prosecution did not have any records and asked that the court treats him as a first offender.
10. 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.
11. While any sentence that would be meted to the Accused person would deter him from committing such an offence in future, this court took the view that a deterrent sentence would not be a consideration in the circumstances of this case as he was a first offender and elderly, sixty (65) years of age.
12. Although the community was unhappy about his many indiscretions and his family were afraid of his threats to them, the offence he committed was against his own son and not against the community. Any sentence would not be for purposes of protecting the community from his actions.
13. It was the considered view of this court that the sentence herein had to be one that was hinged on retributive justice for the secondary victims and to communicate the community's condemnation of



his criminal conduct. The sentence would indirectly send a strong signal to deter other would be offenders from committing such an offence.

14. If the court did not take into account the two (2) objectives of 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. Indeed, the family and community must see that justice was not only done but that the same seemed to have been done failing which he could also be harmed.
15. The Prosecution proposed that he be sentenced to serve a custodial sentence of one (1) year imprisonment. On the other hand, the Accused person suggested that he be granted a non-custodial sentence in view of his age, sickness and the fact that he was as a first offender and was remorseful. The family were objecting to his release at least for now. The community wanted the court to mete a punitive sentence on him.
16. The Accused entered into a Plea Agreement thus saving the court judicial time to hear this matter. Having taken into account the views of the Prosecution and the Probation Officer, his mitigation, the fact that the deceased was the one who attacked him first with a panga and he acted out of provocation after being hit by his own son, the fact that he is elderly and sickly, this court came to the considered view that a sentence of two and half years (2 ½) would be appropriate in the circumstances of the case herein.
17. Accordingly, I hereby sentence the Accused person to two and half years (2 ½) imprisonment from today. The period he stayed in custody from July 25, 2022 to April 19, 2023 to be taken into account while computing his sentence.
18. Orders accordingly.

**DATED AND DELIVERED AT VIHIGA THIS 20<sup>TH</sup> DAY OF APRIL 2023**

**J. KAMAU**

**JUDGE**

