



**State v Ojendo (Criminal Case E032 of 2022)
[2023] KEHC 20770 (KLR) (20 July 2023) (Sentence)**

Neutral citation: [2023] KEHC 20770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E032 OF 2022
DO OGEMBO, J
JULY 20, 2023**

BETWEEN

STATE PROSECUTION

AND

PETER OMONDI OJENDO ACCUSED

SENTENCE

1. The accused, Peter Omondi Ojendo, was originally charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Upon successful plea bargaining with the State, the accused, was on June 26, 2023 convicted on his own plea of guilty to the lesser charge of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.
2. Upon his conviction, the accused, through his learned counsel, Mr Oduol made his mitigation. The accused raised the following factors in mitigation:-
 - i. That he is a first offender.
 - ii. That he is remorseful over this unfortunate incident that led to the death of his brother.
 - iii. That the court should consider the circumstances that led to this incident.
 - iv. That the court exercises leniency and place the accused to a non-custodial sentence.
3. This court, on its own motion called for a Probation Officer's Pre-sentence and Victim Impact Assessment Report. The same report, dated July 17, 2023 was duly filed in court. Salient information captured in the said report are:-
 - a. That deceased and accused were blood brothers.
 - b. That accused is generally industrious.



- c. That he readily admits the offence but maintains that he had no intent.
 - d. He is a breadwinner of his family.
 - e. He is a first offender.
4. The [Sentencing Policy Guidelines](#) at paragraph 4.1, declares the following as objectives of sentencing:-
1. Retribution - to punish the offender for his criminal conduct in a just manner
 2. Deterrence - to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. Rehabilitation - to enable the offender reform from his criminal disposition and become a law abiding person.
 4. Restorative justice - to address the needs arising from the criminal conduct such as loss and damages etc.
 5. Community protection - to protect the community by incapacitating the offender.
 6. Denunciation - to communicate the community's condemnation of the criminal conduct.
5. I have considered the circumstances of this matter, the mitigation raised and the pre-sentencing report. It is clear that this incident was provoked by the deceased, the accused's own brother. The accused has also saved the court's time by entering the plea bargain with the State. He has expressed remorse. The accused deserves mercy. On the other hand, the accused ought to have exercised restraint even at the face of Probation. The deceased was his own brother.
6. This court is therefore convinced that the accused deserves a custodial sentence which would act as deterrence to others of like minds. And also for denunciation, i.e. to express the community's detestation of the act. In the circumstances, I sentence the accused to serve 5 years imprisonment. This sentence shall run from December 15, 2022, the date accused was first arraigned before the court in view of the fact that the accused has remained remanded in custody. Right of appeal on sentence explained to the accused.

Orders accordingly.

Dated, signed and Delivered at Siaya this 20th Day of July, 2023

D.O. OGEMBO

JUDGE

PARA 20.

7.2023

Court:

Ruling read out in Court (online) in the presence of the accused, Mr. Oduol for accused and Ms. Mumu for the Prosecution.

D.O. OGEMBO

JUDGE

PARA 20.



7.2023

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