



**Republic v Okoti (Criminal Case E006 of 2022)
[2023] KEHC 22926 (KLR) (19 September 2023) (Sentence)**

Neutral citation: [2023] KEHC 22926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E006 OF 2022
JN KAMAU, J
SEPTEMBER 19, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

TIMOTHY OKOTI 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 July 10, 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 on June 24, 2022 at around 1300 hours, the deceased herein, Stephen Kwalimba Musanya, a boda boda operator at Shaviringa location within Cheptulu area was gambling with other boda boda operators. He differed with the Accused person who was also a boda boda operator. He went and came back with a panga. The Accused person snatched the panga from him, cut him on the left side of the neck and then escaped to an unknown place.
3. The deceased succumbed to his injuries while being rushed to hospital by good samaritans. He was taken to Jumuia Kaimosi Hospital Mortuary where a postmortem was carried out on July 7, 2022. The cause of death was declared as severe spinal cord injury at level C3 leading to sudden death.
4. On June 28, 2022, police officers from Butere Police Station traced the Accused person within Butere. DCI Hamisi escorted him to Cheptulu where he led them to Alex Isiaho where the murder weapon, the panga was recovered. Further investigations were carried out and the Accused person was charged with the offence before court.
5. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to three (3) years imprisonment. On its part, the State recommended a sentence of five (5) years imprisonment.



6. In his mitigation, he stated that on the material day, he did not intend to kill anyone. He said that he was out on his own business only to meet with the deceased who provoked the incident which still haunted him to date. He averred that he acted in self-defence after the deceased pointed a panga at him and wanted to use it. He asked this court to give him a probationary sentence following the positive Pre-Sentence Report. He pointed out that he was a first offender and was remorseful of what happened. He added that he was ready to move out from the area he had been staying.
7. The Prosecution did not have his previous records and requested this court to treat him as a first offender.
8. According to the Pre-Sentence Report of Fanny Masinde, Probation Officer Vihiga County Office that was dated and filed on September 18, 2023, the Accused person did not pursue attachment after attending Mundeko Polytechnic due to financial constraints. His family and the community said that he was well behaved and had not been charged with any offence previously. The deceased's mother was, however, very bitter about the deceased's death and expected justice from this court. On the other hand, the deceased's father did not object to the Accused person being considered for a non-custodial sentence.
9. The aforesaid Pre- Sentence Report recommended that the Accused person be sentenced to three (3) years' probation but that he relocate to another area, a proposal he was willing to abide by.
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. This court noted that the injuries the deceased sustained were not consistent with the version the Accused person narrated to the Probation Officer. He stated that he felt threatened when the deceased pointed a panga at him and he pushed him whereupon he fell and the panga cut him.
12. The photos that the Prosecution produced as evidence in this matter and marked as Exhibit 1(a)- (j) showed that the deceased had a deep cut on his neck. According to the Post Mortem Report by Dr Davin Adori that was dated July 7, 2022, produced and marked as Exhibit 3, the deceased sustained a sharp cut on his neck that severed the muscles of his neck.
13. It was evident that the Accused person aimed at the deceased's jugular. The blow was not misdirected and appeared to have been calculated. The severity of the injury clearly showed that it was intended to cause the deceased grievous harm which a possibility of causing his death.
14. Going further, although the Accused person acted impulsively after being purportedly confronted by the deceased and had not planned his death, he ought to have exercised greater restraint as violence is not the answer to provocation.
15. Notably, there was nothing to suggest that the deceased attempted to hit him with the panga and that he hit the deceased in self-defence. He ought to have walked away when he disarmed him. The provocation was not sufficient to afford him the defence of self-defence. It was therefore necessary that any punishment that was meted to him deter him from similar reactions and/or actions in future.
16. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.



17. The sentence also had to one that was hinged on retributive justice for the secondary victims. The deceased who was aged twenty (25) years. He did not need or have to die over an argument of a gamble of Kshs 500/=. Justice not only needed to be done but it had to be seen to be done.
18. If the court did not take into account the three (3) objectives of deterrence, 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 as there were possibilities of being harmed.
19. Although the Accused person had never been in conflict of the law prior to the incident and that he was a first offender and remorseful, the circumstances of the case herein led this court to conclude that a non-custodial sentence that had been proposed in the Pre-Sentence Report was not suitable herein.
20. Having considered the facts of this case and the Accused person's mitigation, this court to the firm conclusion that a sentence of five (5) years would be suitable and adequate herein.
21. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to five (5) years imprisonment to run from today. The period he spent from when he was first arraigned in court on February 13, 2022 to September 24, 2023 be and is hereby taken into account in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) while computing his sentence.
22. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 19TH DAY OF SEPTEMBER 2023.

J. KAMAU

JUDGE

