



**Republic v Rodgers Munyekenya Otiba (Criminal Case E043 of 2023)  
[2024] KEHC 15883 (KLR) (14 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 15883 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E043 OF 2023  
REA OUGO, J  
OCTOBER 14, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RODGERS MUNYEKENYA OTIBA ..... ACCUSED**

**SENTENCE**

1. Rodgers Munyekenya Otiba hereinafter referred to as the accused pleaded guilty to a charge of Manslaughter contrary section 202 as within section 205 of the Penal Code, Cap 63 Law of Kenya. The particulars of the offence are; On the 21<sup>st</sup> day of September, 2023 at Kapkerwa village, Emia Location in Kopsirpo Sub-County within Bungoma County caused he unlawful the death of Kelvin Kibet.
2. After a plea bargain the accused person pleaded guilty and upon conviction I sought a pre-sentence report on the accused person. The prosecution asked this court to treat the accused person as a first offender.
3. The pre-sentence report states that the accused person is 32 years old. He is the 7<sup>th</sup> child of 10 children, and his parents are still alive. The family had settled in Kopsiro but moved to Changara location in Teso North Sub County after the incident. The family has no known criminal history but the residents within the accused’s previous residence in Kopsiro lamented about his engagement in antisocial and criminal behaviour. He is married and has 3 underage children. The accused was also described as a social drinker and was suspected of abusing bhang. That the deceased’s death was as a result of the accused’s failure to tame his rage in responding to the sister’s mischievous distress call. The accused is remorseful and regrets his actions. He is alive to the hostile home situation and prayed for a shorter period in custody. He has promised to reinvent himself through behaviour change, decision-making, and adherence to the law. The accused’s family stated that there has been no reconciliation effort between the parties and held that hostility between them remains a concern. They have asked that the



- court to exercise its judicial mercy and accord him a lenient sentence and that if given a chance on a non-custodial sentence this will allow him to take care of his family responsibilities being a family man.
4. The victim's family is still bitter with the offender and recounted how the accused terminated the life of a young man in a gruesome murder. The accused is not welcome in their area and the accused never sought reconciliation. The local administration and a section of the neighbours stated that the accused has had a persistent pattern of violence, especially under the influence of intoxicating substances. He was into alcohol and drinking and was suspected of drug abuse. They warned that in the absence of restitution measures the offender's safety may not be guaranteed in the community due to his tainted past and they are opposed to community supervision.
  5. The probation officer's opinion is that their assessment of the offender's criminogenic risk factors including drugs and substance abuse, criminal history, education, associates, family ties, and community acceptance places him as a high-risk offender whose safety cannot be guaranteed and requires close supervision. Their impression therefore is that the accused person is not suitable for community supervision and rehabilitation at this point and it's their considered view that the offender in this case qualifies for an alternative sentence consideration.
  6. Counsel for the accused submitted as follows in mitigation. The accused is a first offender, he is very remorseful for the act he committed. He is a family man with 3 children all below 10 years and all depend on him. he has been in custody since his arrest. He took himself to the police station and he pleaded to manslaughter. The offence was committed during an affray that led to the deceased's death. Had the deceased left the place he would not have met his fate. The accused acted in self-defence and protected his sister who was under attack from the others. His pre-sentence report though unfavourable lacks exposure. The accused's stay in custody and the environment have reformed him, he has learnt his message to manage his anger. He can get an alternative abode and thus the court can give him a non-custodial sentence. He relied on the case of R. vs. Francis Ndeda High Court at Vihiga HCCRC No. E004 of 2023.
  7. I have considered the facts of this case. The accused whilst armed with a panga approached the deceased and without any reasonable cause cut the deceased with the said panga and the deceased succumbed to injuries. There was no provocation nor was his life threatened as alleged by defence counsel. Had the accused asked his sister what was happening he could have restrained himself from acting as he did. The deceased was cut on the head and the arm. The area the accused targeted was the deceased's head. It was not an affray as alleged.
  8. I have considered that the accused is a first offender, the pre-sentence, his mitigation, and the sentence provided in law for the offence of manslaughter. I have also considered the guidelines on sentencing. The accused is remorseful but actions have consequences. He chose to cut and injure the deceased on the head without inquiring what was happening. The pre-sentence indicates that he uses alcohol and bhang and the community does not want him back. Considering all this I sentence the accused Rodgers Munyekenye Otiba to serve 25 (twenty-five) years imprisonment. Prisons authority shall take into account the period the accused has been in custody. The accused person has a right of appeal.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 14<sup>TH</sup> OCTOBER 2024.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Rodgers Munyekenye Otiba/Accused - Present



Miss Matere - State Counsel/ ODDP

Mr. Okaka -For the Accused Person

Wilkister - C/A

