



**State v Agega (Criminal Case E003 of 2023)
[2024] KEHC 12383 (KLR) (15 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12383 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E003 OF 2023
TA ODERA, J
OCTOBER 15, 2024**

BETWEEN

STATE PROSECUTION

AND

PAUL NYANGW'ARA AGEGA 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 that the deceased is a son to the offender.
2. The pre-sentence report indicates that the offender is a social misfit, a drunkard, a 2nd offender and that the community at home is hostile to him. The report further states that the mother to deceased was still bitter with him. The brother and sister to the offender in their victim impact statements in court vouched for a non-custodial sentence saying he had young children who still depend on him. In mitigation counsel submitted that the offender is 49 years old, a family man, regrets the offence, he is an orphan and has saved the precious time of this court by pleading guilty.
3. The prosecution submitted that that a life was lost herein and a person belongs to the State and that though offender has children, deceased was also his child and that they were hoping that defence would suggest a custodial sentence of 10 years. They sought a custodial sentence.
4. The Supreme Court in the *Muruatetu* case set down the following factors to be considered in sentencing in murder trials;
 - 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.
5. I have carefully considered the nature of the offence, its circumstances, the age of the offender, the pre-sentence report, mitigation, submissions, character of the offender, the fact that the offender was the father to deceased, 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 his wife who is the mother of deceased is still bitter with him and all the necessary factors. Though the victims indicated that they are ready to receive the offender back home, the deceased was his son as rightly submitted by the State. The post mortem report indicates that the cause of death was severe hemorrhage due to liver laceration injury with a sharp penetrating object. This is a case a premeditated killing. The deceased had a right to life which is fundamental and no person has a right to unlawfully take away the right of another. The state also has a duty to protect life as rightly submitted by the learned prosecutor. Though the deceased was a son to the offender he had no right to kill him mercilessly the way he did.
6. It emerged in the pre-sentence report that the home environment is not conducive for return of the offender due to possible community hostility and I agree with the same. The allegation that the offender re-offended had not been established as no records were produced. 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. In the circumstances a custodial sentence would serve to reform him and protect him from the wrath of the community. I proceed to sentence him to serve 7 years imprisonment. Sentence to run from 16.1.23 when he was first remanded in prison till completion in full.

T.A ODERA

JUDGE

15.10.24

Delivered Virtually Via Teams Platform in the Presence of:

The Offender

Koima for the State

Court Assistant: Oigo

Bonuke for the Offender

