



**Republic v Odhiambo (Criminal Case E027 of 2022)
[2024] KEHC 15583 (KLR) (6 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E027 OF 2022
DK KEMEL, J
DECEMBER 6, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

AGRIPPA OLUOCH ODHIAMBO ACCUSED

SENTENCE

1. The accused herein was charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Vide the judgment of this court dated 31/10/2024, the accused was found guilty for an offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convicted therefor.
2. Sentencing hearing took place on 22/11/2024. Mr. Mshindi for the defence submitted that the accused and his drinking companions who included the deceased were at the time intoxicated. He submitted that the accused is remorseful and is the bread winner for his family. He added that the accused regrets the incident and seeks for a non-custodial sentence. It was finally submitted that the accused has been in custody for ten months and 24 days.
3. Miss Kerubo learned counsel for the prosecution indicated that she relies on the pre-sentence report filed by the probation department.
4. This court called for a pre-sentence report. The same is dated 22/11/2024. It indicates that the home environment is not hostile as the community is not opposed to his immediate return to the village and that there is little risk for re-offending. It was the view of the probation officer that the accused requires to undergo some rehabilitation where he will learn more about alcohol reduction therapy.
5. I have considered the mitigation and the sentiments of the probation officer. It is noted that the circumstances leading to the death of the deceased are tragic. The autopsy report produced by PW5



showed that the deceased suffered depressed skull fracture and that the cause of death was severe head injury with extensive fracture secondary to blunt trauma.

The evidence of PW1 is that the accused descended on the deceased and smashed his head with a huge stone four times until he was motionless. The deceased therefore must have died a very painful death. It is instructive that the dispute between the accused and deceased was about some left over drink that PW1 gave to the accused and which the deceased also wanted but which the accused ended up drinking it alone. The accused had no reason to pursue the deceased who had already left the bar. The killing of deceased was thus not warranted.

6. As regards the sentence to be imposed, it is trite that the sentence should be commensurate with the blameworthiness of the offender and that the court must consider all the facts in their entirety. Under Section 205 of the Penal Code, the punishment for manslaughter is a sentence of life imprisonment. The Judiciary Policy Guidelines (paragraph 7.17 – 7.19) provides some of the factors to be considered by the court when apportioning sentences and which include inter alia; gravity of the offence; criminal history of the offender; age of the victim; age of the offender; protection of the community; need for the rehabilitation of the offender.

Looking at the circumstances of the death of the deceased as Juxtaposed with those of the accused herein, it is clear that the accused went overboard by ending the life of the deceased just because the deceased had interfered with his quest to take a left-over drink offered by one of the bar patrons. It would appear to me that the accused has some ungovernable anger which requires a period of custodial rehabilitation before being released back to the community. I am satisfied that a sentence of life imprisonment is not appropriate in the circumstances in view of the favourable pre-sentence report.

7. In the result, I order the accused herein Agrippa Oluoch Odhiambo to serve imprisonment for a period of two (2) years and thereafter do serve under probation for a period of three years.

DATED AND DELIVERED AT SIAYA THIS 6TH DAY OF DECEMBER, 2024.

D. KEMEI

JUDGE

In the presence of

Agrippa Oluoch Odhiambo.....Accused

Mshindi.....for Accused

Mochafor Prosecution

Ogendo.....Court Assistant

