



**State v Nyakundi (Criminal Case E048 of 2022)
[2024] KEHC 15372 (KLR) (2 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E048 OF 2022**

**TA ODERA, J
DECEMBER 2, 2024**

BETWEEN

STATE PROSECUTION

AND

CHARLES ORWARU NYAKUNDI ACCUSED

SENTENCE

1. The offender was initially charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He entered into a plea bargain agreement and the charges were reduced to manslaughter contrary to section 202 as read with 205 of the *Penal Code*. He pleaded guilty to the reduced charge and the case is now for sentencing. 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.
2. I have considered the nature of the offence, its circumstances, mitigation, the age of the offender and the pre-sentence report filed herein. The area chief and the community have expressed their reservations to



the release of the offender on a non -custodial sentence saying he is a known alcoholic and a violent man to his family and the community The wife, children and the community told the Probation Officer that they are enjoying relative peace now that the offender is not at home as he used to threaten them. Also that they are yet to come to terms with the demise of deceased. It has also emerged that the deceased was a boda boda rider within his village and so the other riders are likely to lynch the offender if released. The community recommended a custodial sentence to rehabilitate the offender and also to protect him from the wrath of the community. The home environment is thus not safe for the offender's return as the community is still hostile towards him. Though the offender says this was his first offence and he expressed his remorse for the offence saying he killed his own son by mistake at night thinking he was attacking a thief. Despite the fact that the offender pleaded guilty to the charge herein, the offence of murder is also prevalent within the Jurisdiction of this court and the home environment is not conducive for him. A custodial sentence is thus necessary.

3. I proceed to sentence the offender to serve 10 years imprisonment. sentence to run from 29.7.22.
14 days Right of Appeal.

T.A ODERA

JUDGE

2.12.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

The offender

Mr. Bigogo for the offender

Mr. Koima for the State

Court Assistant - Oigo

