



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

HCCRC NO. 10 OF 2019

PROSECUTOR REPUBLIC

VERSUS

AUSTINE OTIENO MUDA ACCUSED

NOTES ON SENTENCING

The accused, **AUSTINE OTIENO MUDA**, was convicted for the offence of **Manslaughter**, contrary to **Section 202** as read with **Section 205** of the **Penal Code**.

1. He was convicted upon his own plea of “*guilty*”.
2. The accused has prayed for leniency. He said that he was very remorseful for what had happened.
3. In his mitigation he prayed for a non-custodial sentence.
4. The prosecution submitted that the accused had not shown any remorse. The reason for that contention was that, although the accused was a relative of the deceased, he never reached out to the relatives of the deceased.
5. I have taken into account the fact that the accused hit the deceased on the head, using a metal rod. The post-mortem report shows that the deceased sustained a penetrating skull injury with a circumscribed fracture of the vertex of the head.
6. The deceased was a Village Elder, and he was trying to protect a lady from the accused.
7. The accused wanted to marry the lady, but the lady was resistant.
8. The accused became angry with the deceased when the latter tried to protect the lady.
9. I have taken into account the mitigation, noting that the accused has been in custody for more than 2 years.
10. In the Plea Agreement dated 27th April 2021, the prosecution had notified the accused that the issue of sentencing was within the sole discretion of the trial Judge,
11. Secondly, the prosecution had indicated that they would ask the Court to hand down a sentence of 15 Years Imprisonment.
12. On the other hand, the accused had indicated, (in the Plea Agreement) that he would ask the Court to sentence him to 3 Years Imprisonment.
13. It was thus curious that notwithstanding the express statements contained in the Plea Agreement the accused asked for a non-custodial sentence.
14. Having taken into account the circumstances in which the offence was committed, the mitigation and the fact that the accused pleaded guilty, I now sentence him to **TEN (10) Years Imprisonment**.
15. For the avoidance of any doubt, and in compliance with **Section 333 (2)** of the **Criminal Procedure Code**, I direct that in computing the

duration of the sentence herein, the accused shall be given credit for the period which he spent in custody, during the trial.

DATED, SIGNED and DELIVERED at KISUMU This 21st day of July 2021

FRED A. OCHIENG

JUDGE